DOCUMENT RESUME

ED 175 990 UD 019 806

TITLE A Policy Maker's Guide to Title I of the Elementary and Secondary Education Act and Its Relationship to State and Local Special Programs.
INSTITUTION Education Commission of the States, Denver, Colo.
PUB DATE May 79
NOTE [illegible]: Not available in paper copy due to the reproduction quality of the original document
AVAILABLE FROM Education Commission of the States, 300 Lincoln Tower, 1860 Lincoln Street, Denver, Colorado 80295 ($6.50)

EDRS PRICE MF01 Plus Postage. PC Not Available from EDRS.
DESCRIPTORS *Compensatory Education Programs; *Educational Legislation; Educationally Disadvantaged; Elementary Secondary Education; Eligibility; *Federal Programs; *Federal Regulation; *Guidelines; Program Administration; Program Coordination; Program Development; Special Programs; State Programs
IDENTIFIERS *Elementary Secondary Education Act Title I

ABSTRACT

This report attempts to clarify Title I requirements in order to enhance the development of new State and local special programs and the modification of existing programs in a manner that conforms to Title I rules. Five fundamental areas are addressed. These include: (1) the basic requirements contained in the Title I legal framework applicable to programs operated by local school districts and why the various requirements are necessary; (2) which State and local programs qualify for special treatment under Title I; (3) what criteria a program must satisfy in order to qualify for extra Title I funds under the new special incentive grant provision; (4) how State and local special programs can be developed to expand the number of children presently receiving compensatory education without running afoul of Title I requirements; and (5) how Title I programs which serve educationally disadvantaged children can be coordinated without running afoul of Title I recordkeeping requirements. Major points made in each of these five areas are summarized. (Author/EB)

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A Policy Maker's Guide to Title I of the Elementary and Secondary Education Act and Its Relationship to State and Local Special Programs

ROBERT SILVERSTEIN, J.D.

education commission of the states

U.S. DEPARTMENT OF HEALTH, EDUCATION & WELFARE
NATIONAL INSTITUTE OF EDUCATION

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A POLICY MAKER'S GUIDE TO TITLE I OF THE ELEMENTARY & SECONDARY EDUCATION ACT AND ITS RELATIONSHIP TO STATE AND LOCAL SPECIAL PROGRAMS

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May 1979

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FOREWORD

The Education Commission of the States (ECS) has long been on record in support of Title I of the Elementary and Secondary Education Act and has urged that federal funding for this important program be increased to the level necessary to serve all eligible disadvantaged children. At the same time, ECS has emphasized the need for the federal government to recognize and reinforce state and local efforts similar to Title I designed to provide compensatory education to educationally disadvantaged children.

Over the years since enactment of the Elementary and Secondary Education Act in 1965, the Congress has recognized through amendments to Title I, the importance of encouraging state and local compensatory education programs. Unfortunately, this intent has not always been realized because of the lack of clear, concise, and readily accessible information about what was or was not required by federal law. For example, a legislator in one state who was a strong supporter of Title I proposed a new state program designed to provide substantial state funding for educationally disadvantaged children only to find in the closing days of the legislative session that his program violated a little known Title I regulation. That kind of experience not only has fueled frustration with federal regulations, but has inhibited the development of state and local programs to serve additional disadvantaged children which do fit within Title I legal requirements.

Recognizing this problem, the Congress, through the Education Amendments of 1978, revised and reorganized the language of the Title I statute. The amendments clarified the provisions applicable to state and local programs and increased the flexibility available to state and local policy makers with respect to the design of their own compensatory education programs.

Many of the improvements in Title I included in the Education Amendments of 1978 were based on the work of the Legal Standards Project of the Lawyers' Committee for Civil Rights Under Law prepared under contract with the National Institute of Education. The project was headed by Robert Silverstein.

Because of the significance of the 1978 Amendments for state and local policy makers, ECS thought it was essential that a guide to the revised Title I be made available as soon as possible. It is our belief that if information is readily accessible about what Title I is and is not, and about what it requires and does not require, state and local officials will be able to act with confidence as they design their own programs to serve disadvantaged children.

We are extremely pleased that Mr. Silverstein agreed to prepare this guide for ECS, and we hope that it will be useful to all those interested in meeting the needs of educationally disadvantaged children throughout the nation.

Warren G. Hill
Executive Director
Education Commission of the States

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CHAPTER I:

INTRODUCTION

I. PURPOSE OF THE PAPER

In 1965, Congress enacted the Elementary and Secondary Education Act (ESEA) to expand educational opportunities in the nation's schools. [1] Title I of that Act [2] is the cornerstone of federal aid to the nation's elementary and secondary schools. With an appropriation of $2.735 billion in fiscal year 1978 [3] --the largest of any federal elementary and secondary program-- Title I provides financial assistance to local school districts for compensatory education for educationally deprived children residing in areas having high concentrations of children from low-income families. [4]

Title I is not the only source of funds for compensatory education. Since 1963, when California enacted the first state compensatory education program, 17 of the states have initiated efforts to provide additional assistance for educationally disadvantaged students. [5] In fiscal year 1978, states appropriated approximately $490 million to support their own compensatory education programs. [6]

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1. P.L. 89-10

2. "Title I" of ESEA was originally designated "Title II of P.L. 81-874 (1950) pertaining to federal aid to impacted areas. In January 1968, Congress redesignated the enabling legislation as Title I of ESEA.

3. H.R. Rep. No.95-1137, 95th Congress, 2d Session 4(1978)

4. Title I also provides certain "set-aside" programs operated by state agencies, i.e., programs for handicapped children in state institutions, programs for neglected and delinquent children, and programs for migratory children. The state operated programs are not discussed in this paper.

5. See National Institute of Education, State Compensatory Education Programs: A Supplemented Report From the National Institute of Education. (DHEW/NIE 1978)

6. Id.

In the past several years, considerable attention has focused on the relationship between Title I and state and local special programs, especially state and local compensatory education programs. States and local school districts have sought greater flexibility to design their own special programs free of unnecessary federal constraints.

Several of the 17 states recently identified by the National Institute of Education as having enacted state compensatory education programs are considering modifying their existing structures. Other states, now lacking compensatory education programs, are considering the enactment of such legislation.

It is critical that state and local policy makers, who are considering the enactment of state or local compensatory education programs, understand the precise legal constraints contained in the Title I statute. States want to develop policies that comply with Title I rules and, in particular, do not want to develop state policies based on mistaken assumptions about what constitutes a violation of Title I.

The National Institute of Education, in one of its Congressionally mandated reports to Congress concerning compensatory education programs, recently found that although the Title I requirements in the statute and regulations are generally necessary, consistent, and flexible, these requirements are not sufficiently clear and specific to guide the administrators of the program in the application of particular standards to day-to-day situations.[7] This lack of clarity increases the likelihood that state and local policy makers, not understanding what is expected of them, (1) will include provisions in state and local special programs that violate the Title I rules or (2) will pursue overly restrictive policies not required by federal law.

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7. See National Institute of Education, Administration of Compensatory Education: A Report From The National Institute of Education, Chapter V. (DHEW/NIE 1977)

In recognition of these important findings, Congress in the Education Amendments of 1978, [8] both clarified provisions applicable to special state and local programs and increased the flexibility available to state and local policy makers with respect to the design of such programs.

The National Institute of Education reports and interviews with state and local policy makers from around the country indicate that clarification of the Title I requirements in five fundamental areas will greatly enhance the development of new state and local special programs and the modification of existing programs in a manner that conforms to the Title I rules. The areas of inquiry are as follows. First, what are the basic requirements contained in the Title I legal framework [9] applicable to programs operated by local school districts and why are the various requirements necessary? Second, which state and local programs qualify for special treatment [10] under Title I? Third, what criteria must a program satisfy to qualify for extra Title I funds under the new special incentive grant provision? Fourth, how can a state or local special program be developed to expand the number of children presently receiving compensatory education without running afoul of Title I requirements? Fifth, how can Title I and state and local special programs be coordinated, without running afoul of Title I recordkeeping requirements?

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8. P.L. 95-561 (November 1, 1978).

9. The term "Title I legal framework" means the rules governing the operation and administration of Title I programs. The rules generally appear in the Title I statute, the General Education Provisions Act, federal regulations, policy interpretations, and correspondence.

10. Special treatment is provided to certain state and local programs under the following Title I provisions: (1) the special incentive grant provision (state compensatory education programs); (2) the provisions pertaining to the designation of school attendance areas and program participants (all state and local programs providing services of the same nature and scope as would otherwise be provided under Title I); (3) the comparability and excess costs provisions (state and local special programs and state phase-in programs); (4) the supplement, not supplant provision (state and local special programs) and the exemption thereto (state and local compensatory education programs); and (5) the recordkeeping provisions (state and local compensatory education programs identical to Title I).

The purpose of this paper is to address these five areas of inquiry. Underlying this paper is the belief that increased understanding of the Title I rules will help state and local policy makers use the broad range of policy alternatives that comply with Title I.

II. Organizations of the Paper

The paper is divided into six chapters. Chapter I contains the introduction. Chapter II addresses the question: what are the basic requirements in the Title I legal framework applicable to programs operated by local school districts and why are the various requirements necessary. Chapter III addresses the question: which special state and local programs qualify for special treatment under Title I. Chapter IV addresses the question: what criteria must a program satisfy to qualify for extra Title I funds under the new special incentive grant provision. Chapter V addresses the question: how can a special state or local program be developed that expands the number of children presently receiving special assistance without running afoul of the Title I requirements. Chapter VI addresses the question: how can Title I and state and local special programs be coordinated without running afoul of the Title I record-keeping requirement.

Although the precise organization of each chapter varies, Chapters II - VI, which address the five areas of inquiry identified by state and local policy makers, generally will be organized as follows:

- introduction and organization of the chapter,
- the major points made in the chapter,
- a description of the applicable Title I provisions, and
- an analysis of the relationship between Title I and special state and local programs, including the presentation of examples and acceptable and unacceptable models of compliance.

III. Limitations of the Paper

This paper is written without the benefit of the U.S. Office of Education's

regulations implementing the Education Amendments of 1978. We believe the lack of current regulations should not be a significant drawback since the statutory provisions and the legislative history applicable to many areas covered in this paper are extremely specific. This is particularly true of provisions pertaining to state and local compensatory education programs. It is important to recognize, however, that the U.S. Office Of Education's interpretations in forthcoming regulations may differ from our descriptions, which are based on the 1978 amendments to Title I and prior regulations.

One area in which particular caution is warranted is the relationship between the Title I supplement, not supplant provision and bilingual and special education programs. The question when, if ever, Title I funds may be used to pay for programs designed to provide equal opportunity for limited English proficient students and handicapped students remains unresolved. This issue has been the subject of discussion with the U. S. Office of Education and may be addressed in the forthcoming Title I regulations. Because the question remains unresolved, it is not discussed in any detail in this paper.

IV. Summary of Major Points Made In The Paper

The following discussion sets forth the major points made in the paper addressing the five areas of inquiry identified by state and local policy makers.

A. What Are The Basic Local Educational Agency Title I Program Requirements And Why Are They Necessary?

In the words of the statute, Title I funds must be used to expand and improve the educational programs for educationally deprived children residing in school attendence areas having high concentrations of children from low-income families. Title I programs must be designed to meet the special educational needs of such children.

Each of the above words and phrases from the statute has a special significance which forms the basis for a requirement or a series of requirements that school districts

must satisfy to receive grants under Title I.

The basic program requirements: (1) specify the class of intended beneficiaries -- educationally deprived children residing in low-income areas (program focus); (2) specify the nature of Title I programs -- they must be designed to meet the special educational needs of such children (nature of program); (3) attempt to maximize the likelihood that Title I funds will be used effectively to meet the needs of such children by requiring that programs be properly designed and implemented (program design and implementation provisions) and that funds be allocated only for programs intended to expand and improve the regular program (funds allocation provisions); and (4) provide a means for verifying fund and program accountability (accountability provision).

B. Which State Or Local Programs Qualify For Special Treatment Under Title I?

The Title I statute provides special treatment[11] for three categories of state and local special programs: state and local compensatory education programs, bilingual programs, and special education programs. The statute also provides special treatment for state phase-in programs.

A state or local program is considered a compensatory education program under Title I if it is similar to Title I. A state or local program is considered similar to Title I if it satisfies the following criteria:

(1) all children participating in the program are educationally deprived,
(2) the program is based on performance objectives related to educational achievement and is evaluated in a manner consistent with those performance objectives,
(3) the program provides supplementary services designed to meet the special educational needs of the children who are participating,
(4) the school district keeps such records and affords such access thereto as are necessary to assure correctness and verification of criteria (1) - (3), and
(5) the state educational agency monitors performance under the program to ensure that criteria (1) - (4) are met.

The Title I statute does not contain a comprehensive definition of a "bilingual" program. The statute simply states that a bilingual program for children of limited

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11. Id.

English proficiency is considered a special program under Title I. For purposes of this paper, a bilingual program is a program that, at a minimum, is designed to provide equal opportunity for limited-English proficient students in accordance with the U. S. Supreme Court case of Lau v. Nichols, 414 U. S. 563 (1974) and Title VI of the Civil Rights Act of 1964.

The Title I statute does not contain a comprehensive definition of a special education program. The statute simply states that a special education program for handicapped children or children with specific learning disabilities is considered a special program under Title I. For purposes of this paper, a special education program is a program designed, at a minimum, to provide equal opportunity for qualified handicapped persons in accordance with Section 504 of the Rehabilitation Act of 1973.

The fourth category of program qualifying for special treatment under Title I is the state education program being phased into full operation which meets the following criteria:

(1) the program is authorized and governed specifically by the provisions of State law;
(2) the purpose of the program is to provide for the comprehensive and systematic restructuring of the total educational environment at the level of the individual school;
(3) the program is based on objectives, including but not limited to, performance objectives related to educational achievement and is evaluated in a manner consistent with those objectives;
(4) parents and school staff are involved in comprehensive planning, implementation, and evaluation of the program;
(5) the program will benefit all children in a particular school or grade-span within a school;
(6) schools participating in a program describe, in a school level plan, program strategies for meeting the special educational needs of educationally deprived children;
(7) the phase-in period of the program is not more than six school years, except that the phase-in period for a program commenced prior to the date of enactment of the Education Amendments of 1978 shall be deemed to begin on the date of enactment of such Amendments;
(8) at all times during such phase-in period at least 50 percentum of the schools participating in the program are those schools serving project areas which have the greatest number or concentrations of educationally deprived children or children from low-income families;

(9) State funds made available for the phase-in program will supplement, and not supplant, State and local funds which would in the absence of the phase-in program, have been provided for schools participating in such program;

(10) the local educational agency is separately accountable for purposes of compliance with paragraphs (1) through (6), (8), and (9) of this subsection, to the State educational agency for any funds expended for such program; and

(11) the local educational agencies carrying out the program are complying with paragraphs (1) through (6), (8), and (9) and the State educational agency is complying with paragraph (10).

The five major points made in the paper concerning the basic criteria state and local programs must satisfy to quality for special treatment under Title I are set out below.

First, a state or local program need not be identical to Title I to qualify as a state or local compensatory education program under Title I -- it need only be similar to Title I. In order to be considered "similar" to Title I, the state or local program must satisfy criteria contained in the statute. In other words, the label adopted by the state or local educational agency describing its program is not determinative. Once it has been determined that a program qualifies for special treatment, the state educational agency must determine that the local educational agency is actually using the funds in accordance with the criteria.

Second, a State or local compensatory education program that is similar to Title I can include the same exceptions from its requirements as are included in Title I and still retain its eligibility for special treatment.

Third, where state legislation establishing a "special" program, i.e., a program satisfying the applicable criteria, also authorizes other programs not satisfying such criteria, e. g., a program providing extra security services to combat vandalism, only the special program meeting the Title I criteria is entitled to special treatment. Conversely, the fact that state legislation does more than establish a special program or a state phase-in program, does not "taint" the portions of the legislation establishing such programs and prevent their qualifying as special programs or state phase-in programs.

Fourth, where a state enacts multipurpose legislation establishing two special programs, e. g., a state compensatory education program and a bilingual program, regulations adopted by the state may permit or encourage comprehensive planning designed to coordinate the two programs. However, methods for documenting the amount of funds used under each program should be adopted. This is because all special programs do not qualify for the same special treatment, e. g., only state compensatory education funds qualify for federal matching under the Title I special incentive grant program -- bilingual, handicapped and phase-in funds are not to be included (see Chapter IV).

Fifth, if the school district actually designs and then uses state general aid funds to support a compensatory education program similar to Title I, a bilingual education program, or a special education program, these funds will be entitled to special treatment under Title I.

C. What Criteria Must a Program Satisfy to Qualify for Extra Title I Funds Under the New Special Incentive Grant Provision?

The new special incentive grant provision provides an additional dollar under Title I to states for every two dollars of their own funds which they spend on state compensatory education programs satisfying the criteria described below. No state may receive a supplemental grant which exceeds 10 percent of the amount it would receive if the basic grant were fully funded.

To qualify for a special incentive grant, a state must enact a state compensatory education program satisfying the following criteria:

(1) All children participating in the program are educationally deprived.
(2) The program is based on performance objectives related to educational achievement and is evaluated in a manner consistent with those performance objectives.
(3) The program provides supplementary services designed to meet the special educational needs of the children who are participating.
(4) School districts receiving funds under the special incentive grant keep such records and afford access thereto as are necessary to assure the correctness and verification of criteria (1) - (3).

(5) The state educational agency monitors performance under the program to assure that the requirements of criteria (1)-(4) are met.

(6) Not less than 50 percent of the funds expended under the state compensatory education program in the year preceding the year in which it receives a payment under the special incentive grant program must be expended in areas eligible for assistance under Title I. States must develop a system for demonstrating compliance with this criteria.

The key points made in this paper concerning the special incentive grant provision are set forth below.

First, a compensatory education program that is "similar to Title I" does not automatically trigger additional funding under the special incentive grant provision. A program must be similar to Title I and meet two additional criteria: (a) the program must be enacted by the state (local programs do not qualify); and (b) at least 50 percent of the funds must be distributed in school attendance areas eligible for assistance under Title I.

Second, funds provided under bilingual programs, special education programs, and state phase-in programs do not qualify a state for extra assistance. If a state enacts multipurpose legislation, only those funds used for state compensatory education programs may be counted.

Third, additional Title I funds provided under the special incentive grant program must be used to pay for Title I program activities and can not be considered part of the state compensatory education program.

D. Developing a State or Local Special Program that Expands the Number of Children Receiving Compensatory Education Services Without Running Afoul of Title I Rules

From the point of view of a state or local policy maker, the single most important issue in developing a state or local special program is how to expand the number of children receiving compensatory education services without running afoul of Title I rules.

Six provisions of the Title I statute are relevant to this issue. These are:

(a) the provision concerning the distribution of state aid; (b) the maintenance of effort provision; (c) the comparability provisions; (d) the provisions for designating Title I project areas; (e) the provisions for selecting Title I program participants; and (f) the supplement, not supplant provisions.

Of the six, the most important is the supplement, not supplant provision pertaining to state and local special programs. In general, this provision states that Title I funds must supplement, not supplant the level of state and local special program funds which, in the absence of Title I, would have been made available to educationally deprived children, in the aggregate, residing in Title I eligible areas.

The existing Title I statute, as amended in 1978, contains three basic policies concerning the distribution of state and local special funds.

First, Title I neither requires nor encourages favoring educationally deprived children residing in low-income areas in the distribution of state and local special funds; the comparability provision, which did require such favoritism prior to 1974, is now neutral with regard to the distribution of special state and local funds. The supplement, not supplant provision simply requires that such children, in the aggregate, receive their fair share of special state and local funds. The terms underlined in the previous sentence are designed to encourage states to provide supplementary services to the large numbers of educationally deprived children residing in low-income areas who are presently eligible for but unserved by Title I because Title I is substantially underfunded and who could benefit from participation in a state or local special program.

Second, once the low-income area's "fair share of special state and local funds" has been determined, the Title I legal framework does NOT require that children residing in low-income areas participating in state or local special programs also receive assistance under Title I - so long as children participating in the state or local special program, who would have participated in the Title I program, receive services of the same nature and scope as they would have received under Title I.

In other words, it is generally NOT necessary to double fund a particular child who qualifies for assistance under a special state or local program as well as Title I ("layering" of funds is not required). What Title I requires is that educationally deprived children in the aggregate, who reside in Title I eligible areas receive their fair share of special state and local funds. The use of the phrase "educationally deprived children in the aggregate" enables school districts to expand the number of children who will receive compensatory education through state and local programs to include children eligible for but unserved by Title I as well as educationally deprived children not residing in areas eligible for Title I.

Third, when the combination of Title I and state or local compensatory education funds available in Title I eligible areas reaches a specified level Congress viewed as approximating the level that would enable a school district to provide a program of sufficient size, scope, and quality for all educationally deprived children in all Title I eligible areas (K-12), a school district may use additional state and local funds to provide in the more affluent areas the same level of services provided in low-income areas. This is a limited exemption from the supplanting provision.

E. How To Coordinate Title I and State And Local Special Programs Without Running Afoul of the Title I Recordkeeping Requirements

The purpose of the recordkeeping requirement is to ensure fiscal accountability, i.e., to ensure that Title I funds are spent only for permissible purposes. Thus, the recordkeeping provisions do not create substantive requirements pertaining to fund distribution or program design.

The Title I statute expressly permits the coordination of Title I and state and local special programs. This means that the simultaneous use of funds under federal and state programs to finance identifiable portions of a single program are permitted. Furthermore, it is perfectly acceptable to pursue a comprehensive planning approach under which a plan is developed by a school district or a particular school within a

district explaining how all resources, including federal and state regular and categorical funds are to be used. It is also permissible for a state to develop a consolidated application, i.e., the design of a single application submitted by a school district to a state educational agency for approval for receipt of grants under Title I as well as special state sources.

Although simultaneous use of federal and state funds, comprehensive planning, and consolidated applications are all acceptable under Title I, this does not mean that school districts are excused from complying with the recordkeeping requirements. The U. S. Office of Education has explained that the state educational agency must still be able to determine that Title I funds are "expended for and only for" purposes which satisfy each and every Title I requirement. Chapter VI describes five models for coordinating Title I and state and local special programs.

The statute contains an exemption to the recordkeeping requirement where the school district operates a single compensatory education program funded from Title I and a state and local compensatory education program meeting all Title I requirements. Where the state or local program is identical to Title I and such funds are excluded in determining comparability, the local educational agency need not account for the Title I funds separately.

To the extent a federal auditor finds that compensatory education funds have been misspent or misapplied, the federal government can seek repayment in proportion to its contribution.

CHAPTER II

AN OVERVIEW OF THE TITLE I LEGAL FRAMEWORK

I. Introduction

The Title I legal framework reflects our federal system. The federal government (the United States Office of Education - OE), the State Departments of Education (state educational agencies), and local school districts (local educational agencies) share responsibility for administering the Title I program. [12] The primary functions performed by the U. S. Office of Education are to: 1) establish the rules under which the program is to operate, (2) distribute grants to state educational agencies, and (3) ensure that state educational agencies are properly and efficiently administering the Title I funds. [13]

The primary functions performed by state educational agencies include: (1) explaining the applicable legal requirements to local school districts; (2) approving applications submitted by local educational agencies; (3) distributing grants to local educational agencies; and (4) properly and efficiently administering the program (including on-site monitoring and auditing) to ensure that local educational agencies are complying with legal requirements. [14]

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12. The term "state educational agency" (SEA) means "the officer or agency primarily responsible for the state supervision of public elementary and secondary schools." Section 198(17) of Title I (20 U.S.C. 2854(17)).

    The term "local educational agency" (LEA) means a "public board of education or other public authority legally constituted within a state for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a state, or such combination of school districts or counties as are recognized in a state as an administrative agency for its public elementary or secondary schools" Section 198(10) of Title I (20 U.S.C. 2854(10)).

13. See Part D of Title I, Sections 181-188 (20 U.S.C. 2831-2838). See also Part C of the General Education Provisions Act. (20 U.S.C. 1230 et seq.)

14. See Part C of Title I, Sections 161-174 (20 U.S.C. 2801-2824); See also the General Education Provisions Act.

Finally, local educational agencies are responsible for designing programs and providing compensatory education services to the intended benficiaries of the program, i. e., educationally deprived children residing in areas having high concentrations of children from low-income families. 15)

The purpose of this chapter is to describe: (1) the categories of assistance provided to school districts under Title I, and (2) the requirements school districts must satisfy in order to receive and retain such assistance.

II. Categories of Assistance Provided to School Districts Under Title I

A. Introduction

There are three categories of grants to local school districts under Title I. The first category is the basic grant program, which provides assistance to all eligible school districts submitting acceptable applications to state educational agencies.16) The second category is the concentration grant, which provides additional assistance to school districts in counties with especially high concentrations of children from low-income families. 17) The third category is the special incentive grant, which provides additional assistance to school districts in states that have enacted state compensatory education programs. 18)

This section will describe the three categories of assistance provided to school districts under Title I and the process used to distribute such assistance to the school districts.

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15. See Subpart 3 of Part A of Title I, Sections 121-134 (20 U.S.C. 2731-2754). See also The General Education Provisions Act.
16. Subpart 1 of Part A of Title I, Sections 111-112 (20 U.S.C. 2711-2712).
17. Section 117 of Subpart 2 of Part A of Title I (20 U.S.C. 2722).
18. Section 116 of Subpart 2 of Part A of Title I (20 U.S.C. 2721).

B. The Basic Grant Program

The first and largest category of assistance provided to local school districts under Title I is the basic grant. [19] Since 1965, the year Title I was originally enacted, the amount of Title I funds provided under the basic grant program has been determined by a formula, which recognizes the number of school-age children from low income families in each eligible school district in a state. Over time, the major changes to the formula have been in the definition of the term "school-age children from low-income families." [20]

C. Concentration Grants

During its deliberations on Title I in 1978, Congress repeatedly heard testimony about the problems which urban and rural districts with high concentrations of poor children face in trying to support an adequate education program. [21] Consequently, in 1978, Congress added the special concentration grant provision, which provides additional assistance to school districts in counties with large concentrations of poor children. [22]

D. Special Incentive Grants

Prior to the 1978 amendments to Title I, the statute contained an incentive provision, which was designed to reward states whose total tax effort for elementary

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19. Supra., note 16.

20. The major changes to the basic grant program are described in the Conference Report, H.R. Rep. No. 95-1753, 95th Cong. 2d Sess. 253-254 (1978).

21. Supra., note 3 at page 18.

22. Supra., note 17. Eligibility for funds under the concentration grant program is based on the number or proportion (in relation to total population age 5-17) of Title I local educational agency basic grant "formula eligible population" (poverty plus AFDC plus foster and neglected/delinquent children) in the county in which a local educational agency is located. A local educational agency is eligible for a concentration grant if the number of such children in its county exceeds 5,000 or if the proportion exceeds 20 percent, for the preceding fiscal year. The new provision also guarantees each state at least one-quarter of one percent of the total funding of the concentration program.

and secondary education programs exceeded the national average. In 1978, Congress repealed this program because it did not generate significant incentives. 23) In its place, Congress added a special incentive grant program designed to encourage states to enact and maintain state compensatory education programs. The House Committee on Education and Labor explained:

> The Committee feels that an incentive program which encourages and rewards states for providing supplemental aid to Title I would be more consistent with the goals of federal aid and would more directly insure that needy children receive adequate services. 24)

The new special incentive grant program, when fully funded, would provide an additional dollar under Title I to a state for every two dollars a state spent on its state compensatory education program. 25) No state could receive a supplemental grant which exceeds 10 percent of the amount it would receive if the basic grant program were fully funded.

During its deliberations respecting the special incentive grant program, Congress expressed concern that only programs which are consistent with (not necessarily identical to) Title I be included in the incentive grant calculation. 26) Therefore, to qualify for a special incentive grant, a state compensatory education program must satisfy the following criteria:

1. All children participating in the program are educationally deprived.
2. The program is based on performance objectives related to educational achievement and is evaluated in a manner consistent with those performance objectives.

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23. Supra., note 3 at page 17-18.

24. Id.

25. Supra., note 18.

26. Supra., note 3 at page 18.

3. The program provides supplementary services designed to meet the special educational needs of the children who are participating.
4. School districts receiving funds under the special incentive grant keep such records and afford access thereto as are necessary to assure the correctness and verification of criteria (1) - (3).
5. The State Department of Education monitors performance under the program to assure that the requirements of criteria (1) - (4) are met.
6. Not less than 50 percent of the funds expended under the state compensatory education program in the year preceding the year in which it receives a payment under the special incentive grant program must be expended in areas eligible for assistance under Title I. States must develop a system for demonstrating compliance with this criteria. 27)

E. Processes for Distributing Title I Assistance to School Districts

1. Distribution of Assistance under the Basic Grant and Special Incentive Grant Programs

Title I authorizes the Commissioner to make payments to state educational agencies for "grants made on the basis of entitlements created under this Title." 28) The Commissioner determines school districts maximum grants under the basic grant and special incentive grant programs, based on the number of children from low-income families residing in each school district "where satisfactory data...are available." 29)

The Title I statute includes the proviso "where satisfactory data...are available" because low-income data are available for the entire nations only at the county level. Thus, when the county and the school system's boundaries are coterminous, the entitlement is determined directly by the Commissioner through the Department of Commerce.30) However, where the local educational agency's boundaries are not coterminous with

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27. Supra., note 18.

28. Section 102 of Title I (20 U.S.C. 2702).

29. Section 111(a)(2) of Title I (20 U.S.C. 2711(a) (2) and Section 116 of Title I (20 U.S.C. 2721).

30. Section 111(b)(2)(A) of Title I (20 U.S.C. 2711(b)(2)(A).

the county's boundaries, the Commissioner determines the county allocation and the state educational agency is delegated the responsibility of apportioning grants among the school districts in the county. This process is referred to as sub-allocation or sub-county allocation. The National Institute of Education found that nationally 73 percent of Title I grants to school districts are subject to the sub-county allocation procedure.[31]

In general, the state educational agency must sub-allocate the county grants among eligible local education agencies based on criteria prescribed by the Commissioner and set out in the Title I regulations.[32]

Under the regulations,[33] certain funds from the county aggregate amount must first be sub-allocated among the local educational agencies within the county based on the proportion of children, aged 5-17, living in institutions for neglected children. The remainder of the county grant is then allocated on the basis of the current distribution in the county of children, aged 5 to 17, from low-income families (using a poverty level selected by the state educational agency consistent with the purposes of Title I) as determined on the basis of the best available data.[34] Acceptable data include (1) 1970 census data on the number of children from low-income families and (2) AFDC data. Other types of data must be approved by the Commissioner before use by the state educational agency.[35]

To the extent a school district is located in more than one county, the maximum grant for such local educational agency is the sum of its allocations from the aggregate

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31. Supra., note 3 at page 11.

32. Section 111(a)(2)(B) of Title I (20 U.S.C. 2711(a)(2)(B)).

33. 45 C.F.R. § 116a.5(b)(1977).

34. 45 C.F.R. § 116a.5(c)(1977).

35. Id.

grants of the counties in which the local educational agency is located.[36] In cases in which two or more local educational agencies have responsibility for different groups of children in a district or serve school districts which overlap, the state educational agency may allocate grants among such local educational agencies "in such manner as it determines will best carry out the purposes for which the grants under Title I are made available."[37]

In any state in which a large number of local educational agencies overlap county boundaries, the state educational agency may apply to the Commissioner for authority to make allocations directly to local educational agencies and ignore the county allocations.[38] The limitations in this provision are that: (1) the Commissioner may only give this authority to a state for one year at a time; (2) the factors used by the state in making its allocation must be the same as those used in Title I; and (3) there is an appeals process so that dissatisfied local educational agencies can have a review of their allocations by the Commissioner.[39]

Once state entitlements are determined, the Commissioner must pay each state the amount which it is eligible to receive under Title I.[40] Where the sums appropriated by Congress are not sufficient to meet the total state entitlements as determined by the Commissioner, the amounts which states are eligible to receive are determined by ratable reduction to the extent necessary.[41] However, no payments may be made to a state which has taken into consideration payments under Title I in determining the eligibility of a local educational agency in that state for state aid.[42]

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36. 45 C.F.R. § 116a.6(1977).

37. 45 C.F.R. § 116a.7(1977).

38. Section 111(2)(3)(C) of Title I (20 U.S.C. 2711(a)(3)(C)).

39. Supra., note 3 at page 12

40. Section 191 of Title (20 U.S.C. 2841); See also 45 C.F.R. § 116.17(1977).

41. Section 193(a) of Title I (20 U.S.C. 2843(a)): See also 45 C.F.R. § 116a.9(1977).

42. Section 174 of Title I (20 U.S.C. 2824); See also 45 C.F.R. § 116.18 (1977).

The above determinations can be modified if a school district's allocation, as determined by the above figures, would be less than 85 percent of its allocation for the preceding fiscal year. In this case, the allocation for that district must be raised to 85 percent by proportionately reducing the allocations of the remaining local educational agencies within the county.[43] This provision is commonly referred to as the "hold harmless provision." From the funds paid to it under the above paragraphs, each state educational agency then distributes to each eligible local educational agency of the state, which has submitted an application approved by the SEA, the amount for which such application has been approved not to exceed the amount of the local educational agencies entitlement.[44]

In addition to this initial grant distribution, the state educational agency is also responsible for reallocating unused Title I funds, e.g., where a school district has not submitted an application. The reallocation of such funds must be made to those local educational agencies which have the greatest need, caused by inequities or hardships resulting from the Title I funding formula, e.g., population shifts or changing economic conditions.[45]

If excess Title I funds remain after this initial state educational agency reallocation, then the Commissioner is authorized to reallocate these excess amounts to local educational agencies in other states, the District of Columbia or Puerto Rico, which have the greatest need. The total amount reallocated may not exceed the maximum grant authorized.[46]

In accordance with section 412(b) of the General Education Provisions Act[47] local educational agencies may carry over Title I funds not obligated in the current fiscal year to the succeeding fiscal year.

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43. Supra., note 4.

44. Section 192 of Title I (20 U.S.C. 2842).

45. Section 193(b) of Title I (20 U.S.C. 2843(b)). See also 45 C.F.R. § 116a.11(1977)

46. 45 C.F.R. § 116a.11(a)(3)(1977).

47. 20 U.S.C. 1225(b).

2. Distribution of Concentration Grants

Funds made available under the concentration grant provision are allocated by the State Department of Education among the several local school districts that lie, in whole or in part, within a county with expecially high concentrations of children from low-income families.[48] The State Department of Education must allocate such grants in accordance with regulations established by the U. S. Commissioner of Education.

Once concentration grants are allocated to counties, two different suballocations are used, depending on the concentrations of poor children in each local educational agency in the county. School districts with 20 percent or more poor children receive concentration grants in proportion to the distribution of the regular Title I grants for these districts. A school district with fewer than 20 percent of such poor students, receives a smaller proportion of concentration funds determined by dividing its percentage of Title I children by 20.

III. Overview of the Local Educational Agency Program Requirements

A. Introduction

The previous section of this chapter explained that under the Title I legislation, the Commissioner of Education makes payments to state educational agencies "on the basis of entitlements." Once a state educational agency is notified of its total allocation for each county, it distributes the funds to those school districts submitting applications approved by the state educational agency.

Each application submitted by a local educational agency to a state educational agency for approval must contain a description of the programs to be conducted during a predetermined period (not to exceed three years) and include specific assurances that it will comply with particular Title I requirements.[49] The purpose of this

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48. Supra., note 17. See also supra., note 3 at page 19.

49. Section 121 of Title I (20 U.S.C. 2731).

section of the chapter is to describe the major requirements local education agencies must satisfy in order to receive assistance under Title I.

B. Basis for the LEA Program Requirements[50]

In enacting Title I, Congress made the following declaration of policy:

> In recognition of the special educational needs of children of low-income families and the impact that concentrations of low-income families have on the ability of local educational agencies to support adequate educational programs, the Congress hereby declares it to be the policy of the United States to provide financial assistance to local educational agencies serving areas with concentrations of children from low-income families to expand and improve their educational programs by various means which contribute particularly to meeting the special educational needs of educationally deprived children. (Emphasis added.) 51)

Thus, in the words of the Title I statute, funds provided under Title I must be used to expand and improve the educational programs for educationally deprived children in school attendance areas having high concentrations of children from low-income families. Title I programs must be designed to meet the special educational needs of such children.[52]

Each of the above words and phrases from the statute has a special significance which forms the basis for a requirement or series of requirements that local educational agencies must satisfy to receive grants under Title I.

The basic local educational agency program requirements:

(1) specify the class of intended beneficiaries -- educationally deprived children residing in low-income areas (program focus);
(2) specify the nature of Title I programs -- they must be designed to meet the special educational needs of such children (nature of program);
(3) attempt to maximize the likelihood that Title I funds will be used effectively to meet the needs of such children by requiring that programs be properly designed and implemented (program design and implementation provisions) and that funds be

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50. This section of the paper is based on pages 18-36 of a book prepared by Silverstein, et al entitled, A Description of the Title I, ESEA Legal Framework (October 1977). The book was prepared under contract with the National Institute of Education.

51. Section 101 of Title I (20 U.S.C. 2701).

52. Id.; Section 124 of Title I (20 U.S.C. 2734).

allocated only for programs intended to expand and improve the regular program (funds allocation provisions); and

(4) provide a means for verifying fund and program accountability (accountability provision).

C. Program Focus

1. Introduction

Congress recognized that federal appropriations of Title I funds would generally not be sufficient to serve all educationally deprived children in a school district. To prevent dilution of Title I funds, Congress decided to concentrate these limited resources on educationally deprived children in greatest need of assistance residing in areas having the highest concentrations of children from low-income families. The following discussion outlines the general rules contained in the Title I statute for (a) designating projects areas and (b) selecting children to participate in Title I programs.

2. Designating Title I Project Areas

a. Introduction -- The Title I statute and regulations give school districts considerable flexibility in determining which schools will provide Title I services. [53] The legal framework contains only two basic requirements pertaining to the designation of Title I project areas. The first requirement is that schools identified as eligible must have high concentrations of children from low-income families. The second requirement is that from among these eligible schools, districts must target funds in areas which have the highest incidence of children from low-income families.

The following discussion explains these general rules in greater detail and the various exceptions to these rules contained in the statute and regulations.

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53. Supra., note 3 at page 20.

b. General Rules Concerning School Attendance Area Eligibility --

The Title I legislation provides that a school attendance area is generally eligible for assistance under Title I if it has a high concentration of children from low-income families.[54]

According to the existing regulations[55] issued by the U.S. Office of Education, the local educational agency may use either of two basic methods for determining which school attendance areas within a district are considered as "having high concentrations of children from low-income families." Under the first method, only those school attendance areas with a percentage of children from low-income families as high as the district-wide average are eligible to participate in Title I programs ("percentage method"). Under the second method, only those school attendance areas in which the number of such children is as large as the average number of such children per attendance area in the district are eligible ("numerical method").

The regulations permit a local educational agency to have some areas ranked on one basis and some on the other. However, if a combination of the methods is used, "the number of attendance areas actually designated .... may not exceed the number of such areas that could be so designated if only one such method had been used."[56]

In addition to the general standard described above for determining which areas are eligible for assistance under Title I, the statute provides that subject to the condition described in the next sentence, a school district may designate any area in which at least 25 percent of the children are from low-income families as an eligible area, even if the district-wide average is substantially higher.[57] A school district can take advantage of the 25 percent alternative if it

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54. Section 122(a)(1) of Title I (20 U.S.C. 2732(a)(1)).

55. 45 C.F.R.§ 116a.20(b)(2) and (3)(1977).

56. 45 C.F.R.§ 116a.20(b)(4)(1977)

57. Supra., note 54.

can demonstrate that each area which received assistance in the preceding year under Title I and under a state compensatory education program, continue to receive, at a minimum, the same amount of funds it received in the preceding year.

The 25 percent provision permits school districts to designate certain areas, which are below the district-wide average but which have a relatively high concentration of low-income children, as eligible areas. It is used primarily in districts with especially high concentrations of children from low-income families residing in many areas of the district.

c. Exceptions to the General Rules for Determining School Attendance Area Eligibility -- In addition to the general methods described above for determining school attendance area eligibility, a local educational agency may also use other methods for determining area eligibility. These exceptions in the law include (1) the educational deprivation option, (2) the formerly eligible exception, (3) the enrollment option, and (4) the no-wide variance option.

(i) The Educational Deprivation Option [58] -- At the hearings held in 1977-1978 concerning the reauthorization of Title I, several persons testified that the general rules concerning the selection of eligible area prohibit school districts from serving areas with extremely high concentrations of educationally deprived children but which do not include high concentrations of children from low-income families. The 1978 amendments address this exceptional situation. Congressman Perkins, Chairman of the Conference Committee, explained the purpose and meaning of the provision on the House floor.

> The conference report has also eased somewhat the requirements for choosing Title I schools within school districts in order to include those schools which are not ranked as poor schools but which have high numbers or proportions of educationally disadvantaged children.

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58. Section 122(a)(2) of Title I (20 U.S.C. 2732(a)(2)).

> The purpose of this limited amendment is to permit school districts to substitute one or two schools with large numbers of educationally disadvantaged children for poor schools which do not have nearly as many educationally disadvantaged children. School districts may only avail themselves of this option, pursuant to the regulations of the Commissioner, if the district-wide parent advisory council has approved and if the state educational agency has determined that the use of this option will not substantially impair the provision of compensatory education services to educationally deprived low-income children.[59]

In addition, the statute provides that in the event a school district chooses to exercise the option, the total number of areas deemed eligible may not exceed the total number of areas eligible using low-income data.

(ii) The Formerly Eligible Provision[60] -- In order to provide a degree of continuity, a second provision prevents a formerly eligible school from losing its eligibility because of a change in its ranking. Prior to 1974, a school attendance area which was designated as a project area for a particular year could not continue to be designated as a project area during the next year if it failed to meet the general school attendance area eligibility requirements described supra. The Education Amendments of 1974 provided that an eligible attendance area which has been selected as a project area may continue to be eligible to be designated as a project area for at least two additional years.

(iii) The Enrollment Option[61] -- Under certain conditions, a local educational agency may provide Title I services to certain public schools in

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59. Cong. Record H13465 (daily ed. October 14, 1978).

60. Section 122(c) of Title I (20 U.S.C. 2732(c)).

61. Section 122(b) of Title I (20 U.S.C. 2732(b)).

ineligible school attendance areas. Under the Education Amendments of 1974, a local educational agency may, "at its discretion", use Title I funds for educationally deprived children attending a school not located in an eligible school attendance area if "the proportion of children in actual average daily attendance from low-income families is substantially the same as the proportion of such children" in an eligible attendance area.

The regulations[62] implement this statutory provision by providing a standard to determine when this "enrollment option" may be used by a local educational agency. Title I services may be provided to public schools in non-qualifying school attendance areas "if the percentage or number of children from low-income families in average daily attendance at that school is at least as high as the district-wide average percentage or number required" for eligibility on an attendance area basis in accordance with the general school attendance area rules described earlier.

(iv) No-wide Variances Exception to General School Attendance Area Area Eligibility Requirements[63] -- The fourth exception is commonly referred to as the "no-wide variance" provision. The no-wide variances exception reflects the fact that if all school attendance areas have approximately the same incidence of poverty, the poverty criterion will be of little value in determining which areas have the highest incidence of educational deprivation. The regulations[64] provide that "if there is no-wide variance in the concentrations of children from low-income families among the several school attendance areas in a school district, the whole of that school district may at the option of the local educational agency

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62. 45 C.F.R. § 116a.20(h)(1977).

63. 45 C.F.R. § 116a.20(d)(1977).

64. Id.

be regarded as a project area." The regulations[65] contain an objective standard for determining when a "no-wide variance" situation exists. The local educational agency may make such a determination "only if the variation between the areas with the highest and the lowest percentage of such children is not more than one-third of the average percentage of children from low-income families in the district as a whole."

d. General Rule for Targeting School Attendance Areas -- In school districts in which it is not possible to serve all educationally deprived children in all eligible attendance areas, the law includes specific rules for selecting the areas which are to receive special assistance under Title I. This section explains the rules for making this selection, which is referred to as "targeting" school attendance areas.

The general rule concerning the targeting of project areas from among eligible areas is commonly referred to as the "no-skip" provision.[66] This provision generally states that a local educational agency may not designate a school attendance area as a project area unless all attendance areas with a higher percentage or number of children from low-income families have been so designated. There are three exceptions to this general principle. These exceptions are described below.

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65. Id.

66. Section 122(a)(1) of Title I (20 U.S.C. 2732(a)(1)).

e. Exceptions to the General Rules Concerning the Targeting of School Attendance Areas

(i) Substantially Higher Incidence of Educational Deprivation in Lower Ranked Schools[67] -- First, a local educational agency may skip a higher ranked school if a lower ranked school has a "substantially" higher incidence of educational deprivation.

Under the circumstances described above, the regulations provide that a "skipped school" may not be included in the non-project area average for purposes of computing comparability and the local educational agency must in fact demonstrate that the skipped school is comparable to the non-project area school average.[68] If a state educational agency does not first make this required determination, then it cannot approve such a local educational agency request for an exception.

(ii) Schools Deemed Eligible in Accordance with the Formerly Eligible Rule[69] -- Earlier in this section, the "formerly eligible" exception to the general eligibility rules was described. This exception also serves as an exception to the targeting requirements. Thus, a school previously designated as a project area school may continue to be so designated for an additional two years even if it is no longer one of the highest ranked schools.

(iii) Schools Receiving the Same Nature and Scope of Services from Non-Federal Sources as Would Otherwise be Provided Under Title I[70] -- Finally, a local educational agency may skip a high ranked school attendance area if it has

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67. Section 122(d) of Title I (20 U.S.C. 2732(d)).

68. 45 C.F.R. § 116a.20(c)(2)(1977). See also supra., note 3 at page 21.

69. Supra., note 60.

70. Section 122(e) of Title I (20 U.S.C. 2732(e)).

been designated to receive, through the use of funds from non-federal sources, e.g., state compensatory education funds services of the same nature and scope as those that would otherwise be provided under Title I. In other words, a school district is not required to provide Title I funds in the highest ranked schools if services provided to children with state and local funds in those schools are of the same nature and scope as would otherwise be provided under Title I.

This provision "frees up" Title I funds to be used in other eligible but unserved areas.

Whenever children residing in Title I eligible areas and attending private elementary and secondary schools are ineligible for services from non-federal sources, such children must be selected for Title I programs without regard to the provisions of this exemption.[71] Regulations issued by the Commissioner must provide, at a minimum, that school districts must demonstrate comparability in schools which are skipped.[72]

f. Separate Rankings For Grade Spans[73] -- The regulations authorize the use of separate rankings by grade span in applying the general school attendance area eligibility rules and the relevant exceptions, i.e., the educational deprivation option, the no-wide variance rules, the 25 percent rule, the formerly eligible provision, the enrollment option, and the general targeting rules and the relevant exceptions, i.e., serving schools with a lower incidence of poverty but a substantially higher incidence of educational deprivation, schools qualifying under the formerly eligible rule, and schools receiving the same nature and scope of services from non-federal compensatory education programs.

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71. Id. See also supra., note 20 at pages 255 and 261.

72. Supra., note 3 at page 22.

73. 45 C.F.R. § 116a.20(b)(5)(1977).

The regulations[74] also specify that the grade span groupings used for purposes of making school attendance area eligibility and targeting decisions must be the same groups used by the local educational agency for purposes of reporting comparability.

3. Eligibility and Targeting of Children Requirements

a. Introduction -- The eligibility of school districts and school attendance areas to participate in programs under Title I is generally based on economic criteria, i.e., the number of children from low-income families residing in a school district and in a school attendance area, respectively. However, the purpose of Title I, as set forth in the legislation, is to provide financial assistance to local educational agencies to meet the special educational needs of educationally deprived children who reside in low-income areas. Therefore, the statute provides that after project areas have been chosen, educational deprivation and not economic deprivation is the sole criterion for determining which students are eligible to participate in Title I programs and for selecting from among the eligible children, which children are actually to participate in programs under Title I.[75]

According to the statute, the children selected to actually participate in a Title I program, generally must be those who are "in greatest need of assistance."[76]

In other words, there are three basic criteria (subject to certain exceptions described below) a child must meet to be selected for participation in a Title I program. First, the child must reside in a project area. Second, the

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74. Id.

75. Section 123(a) of Title I (20 U.S.C. 2733(a)).

76. Id.

child must be educationally deprived, regardless of the wealth of the child's family. Third, the child must be in greatest need of assistance.

The first criteria, i.e., the child must reside in a project area, was fully described in a previous section. The purpose of this section is to explain the rules relating to the second criteria (the definition of the phrase "educationally deprived children") and the third criteria (determining which children are in "greatest need of assistance").

b. The Term "Educationally Deprived" -- The term "educationally deprived children" is defined in the Title I regulations[77] to mean "(1) children who have need for special educational assistance in order that their level of educational attainment may be raised to that appropriate for children of their age and (2) children who are handicapped".

There are two important points about this definition requiring special emphasis. First, in order to be eligible, children must "have a need for special educational assistance in order that their level of educational attainment may be raised to that appropriate for children of their age." Thus, children who are poor or who are culturally, racially, or linguistically isolated from the community at large but who do not satisfy the criteria pertaining to educational deprivation are not eligible for assistance under Title I.

Second, the regulations reiterate a point which may now be clear; although school attendance areas are selected on the basis of economic criteria, children residing in project areas are selected on the basis of educational deprivation, irrespective of the wealth of their parents. Specifically, the regulations[78] provide that "a child may not be excluded from participating in a project because he or she is not from a low-income family...."

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77. 45 C.F.R. § 116a.2(1977).

78. 45 C.F.R § 116a.21(e)(1977).

c. General Rules Concerning the Targeting of Program Participants -- Since Title I has never been fully funded by Congress, it is generally the case that a local educational agency will be unable to serve all educationally deprived children residing in low-income areas. Therefore, the local educational agency must select, from among all eligible children, those who will actually participate in the Title I program. The decision to select or "target" such children involves two steps.

First, a local educational agency must select, based on a review of existing data on the performance in the agency's basic programs of instruction,[79] the age or grade levels at which it will operate the Title I project (or projects). For example, the local educational agency may choose to serve only those children in grades 7-12. The House Report clearly indicates that Title I is not a program solely for elementary school children.[80]

Second, the local educational agency must determine the children within these groups that will be selected to participate in the Title I program. The children selected must be educationally deprived children in each group that are in greatest need of special assistance, i.e., furthest behind grade level.[81]

d. Exceptions to the Child Targeting Provisions

(i) Targeting Prior Participants -- The law[82] specifies one situation in which a local educational agency may, at its discretion, target children who are not presently "in greatest need" of assistance. Three criteria must be met before a local educational agency may select such children to participate in the Title I program. Such children must (1) reside in the project area,

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79. Supra., note 3 at page 24; See also 45 C.F.R. § 116a.21(a)(1977).

80. Id. at page 26.

81. Id. at page 24; See also 45 C.F.R. § 116a.21(d)(1977).

82. Section 123(b) of Title I (20 U.S.C. 2733(b)).

(2) have participated in a project conducted in a previous year, i.e., identified as being "in greatest need" during a previous year, and (3) still be educationally deprived, i.e., still be performing below the level appropriate for their age level.

(ii) Continuation of Eligibility for Children Transferred to Ineligible Areas in the Same Year[83] -- This exception provides that children who were properly enrolled in a Title I program at the beginning of a school year but who have been transferred in mid-year to a nonparticipating school prior to completion of the program may continue, for the duration of the year, to receive Title I services. The purpose of this special eligibility is to minimize disruption of the educational program for children changing schools in accordance with a mid-year desegregation order or due, perhaps, to a fire or other natural disaster.[84] After that year, children must either reside in a project area or attend a project school to be eligible.[85]

(iii) Skipping Children Receiving Services of the Same Nature and Scope from Non-Federal Sources[86] -- In order to permit maximum coordination between federal and state programs and expand the number of children receiving compensatory assistance, the law provides that a school district may skip children in greatest need of assistance residing in Title I eligible areas if they are receiving from non-federal sources, e.g., state compensatory education programs, services of the same nature and scope as would otherwise have been provided under Title I. This exemption frees up Title I funds for use in meeting the needs of eligible but unserved educationally deprived children residing in Title I eligible areas.

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83. Section 123(c) of Title I (20 U.S.C. 2733(c)).

84. Supra., note 3 at page 23.

85. Id.

86. Section 123(d) of Title I (20 U.S.C. 2733(d)).

D. Nature of Program

The Title I legal framework requires that funds be used to meet the special educational needs of educationally deprived children residing in low-income areas.[87] The structure ensures that the focus of programs be educational although the legal framework clearly permits the use of Title I funds to pay for "auxiliary services", e.g., "health" or "welfare" services to the extent such services are unavailable under other programs and support an educational objective. However, requirements prevent Title I from being recast as a health or welfare program.[88]

E. Program Design and Implementation and Parent Involvement

In order to ensure that Title I programs are "designed"[89] to meet the special educational needs of educationally deprived children in low-income areas, the regulations require a local educational agency demonstrate in its application for Title I funds that (a) it has undertaken a comprehensive assessment of the special needs of the eligible children (needs assessment);[90] (b) it has described the objectives of the projects in relation to the special needs identified in the needs assessment (program objectives);[91] (c) it has designed its program in accordance with the objectives of the project (program design);[92] (d) it has concentrated funds on a limited number of programs and projects, thereby increasing the likelihood of success in meeting the objectives of the project (concentration);[93]

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87. Section 124(a) of Title I (20 U.S.C. 2734(a)).

88. Section 124(f)(2) of Title I (20 U.S.C. 2734(f)(2)).

89 Supra., note 87

90. Section 124(b) of Title I (20 U.S.C. 2734(b)).

91 Supra., note 3 at pages 24-25.

92. Id.

93. Section 124(d) of Title I (20 U.S.C. 2734(d)).

(e) it has allocated Title I funds among project schools on the basis of the numbers and needs of program participants (distribution of funds);[94] (f) it will evaluate the projects to determine whether the objectives of the project have been met (evaluation);[95] (g) it has coordinated efforts with other agencies concerned with the same target population (coordination);[96] (h) it has disseminated information concerning effective teaching strategies and techniques to Title I teachers (information dissemination);[97] (i) it has involved parents, teachers, and school board members in the planning and evaluation of Title I programs (constituent involvement);[98] (j) it has given due consideration to the inclusion of components designed to sustain the achievement of students beyond the school year, e.g., summer programs (sustaining gains);[99] (k) for programs using aides, it has developed a coordinated training program (training of aides);[100] (l) it has involved parents in the planning, implementation and evaluation of programs (parent involvement);[101] and (m) it has made provision for the equitable participation of educationally deprived children enrolled in private schools (private schools).[102]

More specifically, the needs assessment requirement serves three purposes. First, absent a comprehensive assessment of children's needs, certain children residing in low-income areas who are in need of special assistance might be missed; and

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94. Section 124(e) of Title I (20 U.S.C. 2734(e)).

95. Section 124(g) of Title I (20 U.S.C. 2734(g)).

96. Section 124(f) of Title I (20 U.S.C. 2734(f)).

97. Section 124(h) of Title I (20 U.S.C. 2734(h)).

98. Sections 124(i) and (j) of Title I (20 U.S.C. 2734(i) and (j)).

99. Section 124(k) of Title I (20 U.S.C. 2734(k)).

100. Section 124(l) of Title I (20 U.S.C. 2734(l)).

101. Section 125 of Title I (20 U.S.C. 2735).

102. Section 130 of Title I (20 U.S.C. 2740).

parents of other children having less need for special assistance might successfully lobby for inclusion of their children in the Title I program. The needs assessment requirement enables local educational agencies to resist such pressures. Second, if it were not required to conduct a needs assessment, a local educational agency could use Title I funds to meet low-priority needs rather than the most pressing needs. Third, a needs assessment increases the likelihood that the educational strategies chosen will be effective. Knowledge of the specific needs of the children to be served is essential to the development of effective educational strategies addressing those needs.

Specific identification of program objectives establishes a clear direction for program activities. Thus, the formulation of objectives directly responsive to the needs identified in the needs assessment increases the likelihood that program activities will be relevant to identified needs of children. In addition, without objectives it is difficult, if not impossible, to determine whether a program has been successful since objectives establish the criteria against which success can be measured. It is also elementary that objectives encourage purposeful rather than aimless activity.

Similarly, the requirement that strategies be specifically formulated to accomplish program objectives is an important aspect of maximizing the relevance to pupil needs and the likelihood of success of Title I funded activities. This is nothing more than a requirement that (1) Title I programs be planned rather than determined merely by custom or inertia; and (2) that local educational agency staff use their best judgement to develop program strategies, e.g., regarding curriculum and resource development, that will accomplish previously identified objectives.

The program design and other Title I provisions do not require Title I programs to be structured according to any set pattern.

The House report recognizes that some school officials erroneously believe

that Title I requires the use of "pull-out" programs.[103] The Report states: "The Committee wishes to emphasize that Title I should not be construed to encourage or require any particular instructional strategy...."

The concentration requirement, which is intended to increase program quality, is based on a simple premise: if funds are spread so thinly that children receive few extra services or only brief exposure to the services provided, little or no progress will be made. Decisions to limit the number of participants to ensure program effectiveness -- so that the services provided are likely to substantially increase the educational attainment of the children --- are difficult and sometimes painful to make. The concentration requirement serves this important purpose. If the requirement did not exist, local educational agency officials might succumb to the pressures to "serve everyone" and implement "pet projects."

The requirement that Title I funds be allocated among project schools according to the number and needs of program participants is designed to ensure that school districts respond to similar educational needs in all project schools with programs of similar size, scope, and quality. The National Institute of Education found that certain school districts adopted arbitrary methods for distributing Title I funds among project schools.[104])

The coordination requirement is included in the Title I legal framework to avoid a duplication of benefits and to ensure the most effective and efficient use of Title I funds toward meeting the special educational needs of program participants.

The evaluation requirement also plays an important role in maximizing program quality. Evaluations determine whether Title I projects are succeeding

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103. Supra., note 3 at pages 26-27.

104. Supra., note 3 at page 16.

but, more importantly, they provide valuable insights about how programs might be improved.

The requirements that parents of program participants, Title I teachers, and school board members be involved in the planning and evaluation of Title I programs are designed to increase the likelihood that programs will be successful by ensuring that the key actors play active roles in the program's development and implementation.

The provision that school districts give due consideration to adopting program strategies that are designed to sustain gains was added to the Title I legal framework in recognition of studies which found that children in Title I programs who made significant academic gains during the school years were regressing when they were not in the Title I program.

The requirement that teacher aides receive coordinated training along with the teachers who they will assist increases the likelihood that the aides and the teachers will work as an effective team.

The parent involvement requirement, which generally requires the establishment of district-wide and school level advisory councils, is based on several premises. First, when parents are involved in the planning, implementation, and evaluation of a program for their children, there is a greater interest on the part of both parents and children in working toward the success of the program.[105] Second, there is a greater likelihood that Title I funds will be used for well-planned programs for the intended beneficiaries where the parents of the intended beneficiaries are authorized to perform oversight responsibilities with respect to the proper implementation of the program.

The requirement pertaining to the participation of educationally deprived children attending private schools in Title I programs ensures that a needy

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105. H.R. Rep. No. 93-805 3 U.S. Code Cong. and Adm. News 4109(1974).

child's enrollment in a private school will not affect the level of assistance he/she receives under Title I. Expenditures for services provided to educationally deprived children in private schools must be equal (taking into account the number of children to be served and the needs of such children) to expenditures for children enrolled in the public schools of the local educational agency. Whenever the U.S. Commissioner of Education determines that a local educational agency is unable or unwilling to provide adequate services for children attending private schools, he/she must bypass the educational agencies and make special arrangements for the delivery of services to such children.

F. Funds Allocation Provisions

To ensure that Title I funds are used to "expand and improve"[106] the educational programs of educationally deprived children residing in low-income areas and to meet their "special"[107] as opposed to regular or ordinary needs, the Title I statute and regulations have historically (a) prohibited certain types of discrimination with respect to the distribution of state and local funds and (b) required the provision of a certain minimum level of state and local support that is provided as a matter of course to nonparticipants. Specifically, the Title I statute contains the following provisions: (a) a provision prohibiting the distribution of state aid in any way which takes a local educational agency's Title I allocation into consideration and penalizes the local educational agency in the distribution of state funds;[108] (b) a requirement that school districts maintain their fiscal effort from one year to the next (maintenance

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106. Section 101 of Title I (20 U.S.C. 2701).

107. Id.; Section 124 of Title I (20 U.S.C. 2734).

108. Section 174 of Title I (20 U.S.C. 2824).

of effort);[109] (c) a provision requiring that Title I funds supplement the level of regular state and local funding and a restriction against using Title I funds to supplant, i.e., replace, regular state and local funds that would have been provided to program participants but for the existence of Title I (supplement, not supplant regular state and local funds);[110] (d) a provision requiring that Title I funds supplement, not supplant the level of special state and local funds (e.g., state compensatory education funds) that, but for the existence of Title I, would have been provided to educationally deprived children, in the aggregate, residing in low-income areas (supplement, not supplant special state and local funds);[111] (e) a requirement that services provided with state and local funds in Title I schools be comparable, that is, approximately equal, to services provided in non-Title I schools (comparability);[112] and (f) a requirement that Title I funds be used only for the excess costs of programs and projects (excess costs).[113]

More specifically, the provision which prohibits penalizing reductions in state aid, along with other provisions, ensures that receipt of Title I funds is not used as a basis for discrimination against particular local educational agencies receiving large amounts of Title I funds.

The "maintenance of effort" requirement ensures that Title I grantees do not shift to the federal government their ongoing financial responsibilities for their education programs and helps ensure that federal assistance serves a supplemental rather than a basic education function.

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109. Section 126(a) of Title I (20 U.S.C. 2736(a)).

110. Section 126(c) of Title I (20 U.S.C. 2736(c)).

111. Section 126(d) of Title I (20 U.S.C. 2736(d)).

112. Section 125(e) of Title I (20 U.S.C. 2736(e)).

113. Section 126(b) of Title I (20 U.S.C. 2736(b)).

The provision that local educational agencies must supplement, not supplant regular state and local funds prohibits local educational agencies from using the existence of Title I funds as a basis for discriminating against educationally deprived children participating in Title I programs in the provision of state and local base or regular funds. In other words, program participants must receive the same level of state and local funds they would have received were Title I not in existence; i.e., the same level of funds provided to non-participants. They cannot be penalized in the provision of state and local funds because they receive assistance under Title I. In no case may Title I funds be used to supplant state and local funds.[114)]

The supplanting provision covering special state and local funds is designed to ensure that educationally deprived children, in the aggregate, residing in Title I eligible areas, receive their fair share of special state and local funds. Note the difference between the two supplanting provisions. Whereas the supplanting provision covering regular state and local funds ensures that each program participant receives his/her fair share of base funds, the supplanting provision covering special funds protects the class of educationally deprived children (rather than each child) in poor areas. The latter provision ensures that educationally deprived children in poor areas who are eligible for, but do not receive assistance under Title I (because Title I is underfunded) are not penalized in the distribution of state and local special funds simply because they reside in a poor area.[115)] In other words, the supplement, not supplant provision covering special state and local funds permits local educational agencies to expand

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114. Supra., note 3 at pages 29-30.

115. Id. Because Title I is not fully funded, there are two types of educationally deprived children residing in low-income areas that are eligible for Title I services: (1) those actually served by Title I and (2) those who are eligible for Title I services, but not served.

the number to children receiving compensatory education while, at the same time, ensuring that the children, eligible for but not served by Title I, who reside in poor areas receive their fair share of the special funds.

In some local educational agencies, the combination of federal and state compensatory education funds may be so great that all educationally deprived children at all grade levels in poor areas are receiving a compensatory education program of sufficient size, scope, and quality whereas certain educationally deprived children in non-poor areas are not receiving any assistance. In this situation, to require that additional special state funds be provided to poor areas in order to comply with the special supplanting provision would be counter-productive. In recognition of this finding, the statute includes a limited exemption from the supplanting provision covering special state and local compensatory education funds: local educational agencies are exempted from the supplanting provision[116] where the total amounts of Title I funds and state or local compensatory education funds used in areas eligible for assistance under Title I equals or is greater than the amount of Title I funds the local educational agency would have received that year had Title I been fully funded. Under this limited circumstance, the local educational agency may use additional state or local compensatory education funds exclusively in non-Title I areas until those areas are brought up to the same level of total compensatory education funding (state, local and federal) provided per program participant in the Title I areas. After the non-Title I areas are brought up to this level, the "supplement, not supplant" requirement is fully applicable to the distribution of any additional state or local compensatory education funds.

The "comparability" requirement is intended to ensure that services provided with state and local funds to educationally deprived children attending

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116. Section 132 of Title I (20 U.S.C. 2752).

Title I schools are approximately equal to services provided to children attending non-Title I schools, before the addition of Title I funds for Title I schools. Where all schools are Title I schools, the law requires that services provided at each school be substantially comparable.

The "excess costs" provision ensures that Title I funds will be used only for the excess costs of programs which exceed the average per pupil expenditures of a local educational agency for children included in such projects.

Prior to 1974, local educational agencies were required to include state and local compensatory education funds, bilingual funds, and in some cases, special education funds in calculating comparability and excess costs. In 1974, Congress amended the Title I statute to allow school districts, at their option, to exclude expenditures under:

- state and local compensatory education program similar to Title I,
- bilingual programs, and
- special education programs.[117]

A state or local compensatory education program is "similar to Title I" if it satisfies the following criteria:[118]

1. All children participating in the program are educationally deprived.

2. The program is based on performance objectives related to educational achievement and is evaluated in a manner consistent with those performance objectives.

3. The program provides supplementary services designed to meet the special educational needs of the children who are participating.

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117. Section 131 of Title I (20 U.S.C. 2751)

118. Section 131(c) of Title I (20 U.S.C. 2751(c)).

4. School districts receiving funds under the special incentive grant keep such records and afford access thereto as are necessary to assure the correctness and verification of criteria 1-3.

5. The State Department of Education monitors performance under the program to assure that the requirements of criteria 1-4 are met.

In 1978, Congress expanded the categories of state programs whose funds may be excluded from computing excess costs and comparability to include state phase-in programs. A state phase-in program is a program satisfying the following criteria:[119]

1. The program is authorized and governed specifically by the provisions of state law;

2. The purpose of the program is to provide for the comprehensive and systematic restructuring of the total educational environment at the level of the individual school;

3. The program is based on objectives, including but not limited to, performance objectives related to educational achievement and is evaluated in a manner consistent with those objectives.

4. Parents and school staff are involved in comprehensive planning, implementation, and evaluation of the program;

5. The program will benefit all children in a particular school or grade-span within a school;

6. Schools participating in a program describe, in a school level plan, program strategies for meeting the special educational needs of educationally deprived children;

7. The phase-in period of the program is not more than six school years, except that the phase-in period for a program commenced prior to the date of enactment of the Education Amendments of 1978 shall be deemed to begin on the date of enactment of such Amendments;

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119. Section 131(d) of Title (20 U.S.C. 2751(d)).

8. At all times during such phase-in period at least 50 percentum of the schools participating in the program are the schools serving project areas which have the greatest number or concentrations of educationally deprived children or children from low-income families;

9. State funds made available for the phase-in program will supplement, and not supplant state and local funds which would in the absence of the phase-in program, have been provided for schools participating in such programs;

10. The local educational agency is separately accountable for purposes of compliance with paragraphs (1) through (6), (8) and (9) of this subsection, to the state educational agency for any funds expended for such program; and

11. The local educational agencies carrying out the program are complying with paragraphs (1) through (6), (8) and (9) and the state educational agency is complying with paragraph (10).

In addition to the above requirements, the legislation contains a requirement that programs contribute particularly to meeting the special educationally deprived children, [120] and the regulations contain a prohibition against the use of Title I funds to meet the general needs of the schools or the student body, however pressing those needs may be. [121]

The legislation contains two exceptions to the prohibition against using Title I for "general aid."

The first exemption permits personnel paid entirely by Title I funds to assume duties, such as hall and cafeteria duty, normally performed by similarly

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120. Section 101 of Title I (20 U.S.C. 2701); See also supra., note 3 at page 49.

121. 45 C.F.R. § 116a.22(b)(4)(iii), (b)(6), (b)(7), and (b)(8)(1977).

situated personnel paid by state and local funds, so long as the amount of time Title I paid teachers spend on non-Title I related duties does not exceed the proportion of time spent on such duties by non-Title I paid teachers or 10 percent, whichever is less.[122]

The second exemption, commonly referred to as the "school-wide project" exemption, permits Title I funds to upgrade the entire educational program in schools having 75 percent or more children in attendance from low-income families if certain conditions are met[123] including, among other things, the school district (1) must allocate Title I funds to the highly concentrated school in an amount that is at least equal to the per pupil amount allocated to Title I children in schools which are not highly concentrated and (b) contribute state or local supplementary funds to that school in an amount, per child in that school who is not educationally deprived, equal to the amount provided per educationally deprived child attending the highly concentrated school. The highly concentrated school must also develop a school plan, approved by the state educational agency and the parent advisory council for such school, which specifies, among other things, the steps it plans on taking for meeting the needs of the educationally deprived children. If the plan is approved, the local educational agency is relieved, with respect to such school, of (a) any prohibition against commingling and (b) any demonstration that services provided with Title I funds are supplementary to the services regularly provided in that school.

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122. Section 134 of Title I (20 U.S.C. 2754).

123. Section 133 of Title I (20 U.S.C. 2753); See supra., note 3 at pages 35-36.

G. Accountability Provisions and Complaint Resolution

The final category of requirements, which include the reporting,[124] recordkeeping,[125] and access to information[126] provisions, are designed to ensure fund and program accountability. These requirements provide a means for verifying compliance with other Title I legal requirements described above, including, for example, (1) the requirement that Title I funds only be used to meet the needs of educationally deprived children residing in low-income areas and not to meet the needs of children residing in eligible areas who are not educationally deprived or children who do not reside in low-income areas and (2) the requirement that Title I funds by used to supplement, not supplant state and local funds.

The statute contains an exemption to the recordkeeping requirement where the school district operates a single compensatory education program funded from Title I and a state or local compensatory education program meeting all Title I requirements.[127] Where the state or local program is identical to Title I and such funds are excluded in determining comparability, the local educational agency need not account for the Title I funds separately.

The statute also requires that local educational agencies develop a procedure for resolving complaints concerning the design and implementation of Title I programs.[128]

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124. Section 127(b) of Title I (20 U.S.C. 2737(b)).

125. Section 127(a) of Title I (20 U.S.C. 2737(a)).

126. Id.

127. Id.

128. Section 128 of Title I (20 U.S.C. 2738).

CHAPTER III

WHICH STATE OR LOCAL PROGRAMS QUALIFY FOR SPECIAL TREATMENT UNDER TITLE I?

I. Introduction

The Title I statute provides special treatment [129] for three categories of "special" programs: state and local compensatory education programs, bilingual programs, and special education programs. The Title I statute also provides special treatment for state phase-in programs.

The purpose of this chapter of the paper is to describe the basic criteria which a state or local program must satisfy to qualify as a "special program" or a state "phase-in program" under Title I. This discussion will be followed by an analysis of the implications of these criteria for state policy makers. Subsequent chapters in the paper will explain the precise nature of the special treatment each program receives under Title I.

II. Major Points Made In This Chapter

The five major points made in this chapter are described below.

First, a state or local program need not be identical to Title I to qualify as a state or local compensatory education program under Title I--it need only be similar to Title I. In order to be considered "similar" to Title I, the state or local program must satisfy criteria contained in the statute. In other words, the label adopted by the state or local educational agency describing its program is not determinative. Once it has been determined that a program qualifies for special treatment, the state educational agency must determine that the local educational agency is actually using the funds in accordance with the criteria.

Second, a state or local compensatory education program that is similar to Title I can include the same exceptions from its requirements as are included in Title I and still retain its eligibility for special treatment.

Third, where state legislation establishing a "special" program, i.e., a program satisfying the applicable criteria, also authorizes other programs not satisfying

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129. See supra., note 10.

such criteria, e.g., a program providing extra security services to combat vandalism, only the special program meeting the Title I criteria is entitled to special treatment. Conversely, the fact that state legislation does more than establish a special program or a state phase-in program, does not "taint" the portions of the legislation establishing such programs and prevent their qualifying as special programs or state phase-in programs.

Fourth, where a state enacts multipurpose legislation establishing two special programs, e.g., a state compensatory education program and a bilingual program, regulations adopted by the state may permit or encourage comprehensive planning designed to coordinate the two programs. However, methods for documenting the amount of funds used under each program should be adopted. This is because all special programs do not qualify for the same special treatment, e.g., only state compensatory education funds qualify for federal matching under the Title I special incentive grant program--bilingual, handicapped and phase-in funds are not to be included (see Chapter IV).

Fifth, if the school district actually designs and then uses state general aid funds to support a compensatory education program similar to Title I, a bilingual education program, or a special education program, these funds will be entitled to special treatment under Title I.

III. Special Programs Defined

Three categories of programs are considered "special programs under Title I--(a) state and local compensatory education programs, (b) bilingual programs, and (c) special education programs.[130] The definitions contained in the Title I statute are described below.

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130. Section 131(b)(1) of Title I (20 U.S.C. 2751(b)(1)).

A. State and Local Compensatory Education Programs

A state or local program is considered a compensatory education program under Title I if it is similar to Title I. A state or local program is considered similar to Title I if it satisfies the following criteria:[131]

(1) all children participating in the program are educationally deprived,
(2) the program is based on performance objectives related to educational achievement and is evaluated in a manner consistent with those performance objectives,
(3) the program provides supplementary services designed to meet the special educational needs of the children who are participating,
(4) the school district keeps such records and affords such access thereto as are necessary to assure correctness and verification of criteria (1) - (3), and
(5) the state educational agency monitors performance under the program to ensure that criteria (1)-(4) are met.

In addition to the substantive criteria described above, a state or local program must satisfy certain pre-expenditure certification procedures described below before it can qualify for special treatment as a state or local compensatory education program similar to Title I.

With respect to a state program[132], the Title I statute provides that the U.S. Commissioner of Education must make an advance determination of whether the state program meets the five criteria described above. The Commissioner's determination must be in writing and must include the reasons for the determination.

With respect to a local program,[133] e.g., a program using state or local general aid funds, the Title I statute provides that the state educational agency must make an advance determination of whether or not the local program meets the five criteria described above. The state educational agency's determination must be in writing and must include the reasons for the determination.

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131. Section 131(c) of Title I (20 U.S.C. 2751(c)).

132. Section 131(e) of Title I (20 U.S.C. 2751(e)).

133. Section 131(f) of Title I (20 U.S.C. 2751(f)).

The pre-expenditure certification provisions were added to the Title I statute in 1978 in order to save school districts from having to rely on possible erroneous beliefs about whether their special programs qualified for special treatment under Title I, only to find themselves in an embarrassing position after an audit.[134]

Once it has been determined that a program, as legislated, qualifies for special treatment, the state educational agency must determine that the special funds are being used in accordance with the standards contained in the state or local legal framework. In other words, it is the use of the state or local funds that ultimately determines the treatment it will receive under Title I. For example, if a state were to adopt compensatory education legislation which satisfied the five criteria but a particular local educational agency used the state special funds for general aid purposes, the state special funds appropriated to that particular local educational agency would not be entitled to special treatment under Title I.

In sum, a state and local special program must satisfy the criteria set out in the Title I statute before it qualifies for special treatment under Title I. However, the use of the state or local funds in a manner that qualifies for special treatment is the ultimate test of whether it qualifies for special treatment.

B. Bilingual Programs

The Title I statute does not contain a detailed definition of a "bilingual" program. The statute simply states that a bilingual program for children of limited English proficiency is considered a special program under Title I.[135] For purposes of this paper, a bilingual program is a program that, at a minimum, is designed to provide equal opportunity for limited-English proficient students in accordance with the U.S. Supreme Court case of Lau v. Nichols, 414 U.S. 563 (1974) and Title VI of the Civil Rights Act of 1964.[136]

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134. Supra., note 3 at page 35.

135. Section 131(b)(1)(D) of Title I (20 U.S.C. 2751(b)(1)(D)).

136. 42 U.S.C. 2000(a)-(e).

C. Special Education Programs

The Title I statute does not contain a detailed definition of a special education program. The statute simply states that a special education program for handicapped children or children with specific learning disabilities is considered a special program under Title I. For purposes of this paper, a special education program is a program, that, at a minimum, is designed to provide equal opportunity for qualified handicapped persons in accordance with Section 504 of the Rehabilitation Act of 1973.[137]

IV. State Phase-In Programs Defined

The fourth category of program qualifying for special treatment under Title I is the state education program which is being phased into full operation[138] and which the U.S. Commissioner of Education determines in advance meets the following criteria:[139]

(1) the program is authorized and governed specifically by the provisions of state law;
(2) the purpose of the program is to provide for the comprehensive and systematic restructuring of the total educational environment at the level of the individual school;
(3) the program is based on objectives, including but not limited to, performance objectives related to educational achievement and is evaluated in a manner consistent with those objectives;
(4) parents and school staff are involved in comprehensive planning, implementation, and evaluation of the program;
(5) the program will benefit all children in a particular school or grade-span within a school;
(6) schools participating in a program describe, in a school level plan, program strategies for meeting the special educational needs of educationally deprived children;
(7) the phase-in period of the program is not more than six school years, except that the phase-in period for a program commenced prior to the date of enactment of the Education Amendments of 1978 shall be deemed to begin on the date of enactment of such Amendments;
(8) at all times during such phase-in period at least 50 percentum of the schools participating in the program are the schools serving project areas which have the greatest number or concentrations of educationally deprived children or children from low-income families;
(9) state funds made available for the phase-in program will supplement, and not supplant, state and local funds which

would in the absence of the phase-in program, have been provided for schools participating in such program;

(10) the local educational agency is separately accountable for purposes of compliance with paragraphs (1) through (6), (8) and (9) of this subsection, to the state educational agency for any funds expended for such program; and

(11) the local educational agencies carrying out the program are complying with paragraphs (1) through (6), (8), and (9) and the state educational agency is complying with paragraph (10).

V. Discussion of the Key Policy Issues Concerning The Definitions of the Three Special Programs and the State Phase-In Program

This section of the paper discusses the five key policy issues concerning the criteria set out in the legislation that state and local special programs and state phase-in programs must satisfy to qualify for special treatment under Title I.

A. In Order to Qualify as a Compensatory Education Program, State and Local Programs Must Be Similar But Not Necessarily Identical to Title I

1. Introduction

In order to qualify as a state or local compensatory education program, a program need not be identical to Title I-- it must be similar to Title I. The criteria for determining whether a program is similar to Title I were set forth on page 55. The following discussion identifies some of the policy implications flowing from the criteria chosen by Congress.

2. Targeting of Children

The intended beneficiaries of the state or local compensatory education program must be educationally deprived.[140] The program, however need not adopt Title I's policy of targeting children in greatest need of assistance, i.e., furthest behind grade level. Thus, for example, a state or local program will be considered "similar to Title I" if it targets educationally deprived children who are not far below grade level and with supplementary assistance may be able to attend college.

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140. Section 131(c)(1) of Title I (20 U.S.C. 2751(c)(1)).

3. Designating Schools and Parent Involvement

State and local programs need not limit the number of schools that are eligible for special state or local funds, e.g., all schools may receive and operate state and local compensatory education programs.[141] If the state or local program limits the eligibility of schools and requires certain schools to be targeted, it is not necessary that low-income criteria be employed. The state or local framework may use low-income, educational deprivation, reasonable proxies for educational deprivation (such as transiency figures) or any combination of the above.[142]

State and local programs are not required to include parent involvement provisions; although when coordination between a state or local program and Title I is anticipated, the inclusion of such provisions is often desirable.

4. Comparability Reporting Requirements

The state or local program need not contain comparability reporting requirements similar to those contained in the Title I statute and regulations. However, the state or local legal framework must contain provisions ensuring that the funds for special state and local programs and state phase-in programs supplement the level of funds which, in the absence of these programs, would have been provided to the children participating in such state or local programs.[143] Program participants must receive their fair share of non-special state and local funds, i.e., the same level of funds from state and local sources normally provided to children not participating in the program.

5. Selection of Particular Grade-Spans

The Title I statute neither requires nor encourages the targeting of special state or local special programs or state phase-in program funds in any particular

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141. Supra., note 20 at page 254.

142. Id. Whatever criteria are employed must be applied so that children eligible for Title I services receive their fair share of state and local compensatory education funds. See discussion at pp 75 - 103.

143. Section 131(c)(3) of Title I (20 U.S.C. 2751(c)(3)).

grade-span. The selection of grade-spans is solely within the discretion of the state educational agency or local educational agency.[144]

B. The Adoption of Exemptions To The Five Criteria Set Out In The Title I Legislation

The previous section explains that a state or local compensatory education program need not be identical to Title I to qualify for special treatment; it need only be similar to Title I. A state or local compensatory education program is considered similar if it satisfies the five criteria set out on page 55. These criteria establish minimum standards. Once the minimum requirements have been satisfied, state and local programs may deviate from the Title I requirements. A number of ways in which these state and local programs can be dissimilar and still qualify for special treatment under Title I were described above.

One question that has arisen concerning the five criteria is whether a state or local compensatory education program, which satisfies the five criteria, may adopt exemptions to such criteria that are identical to the exemptions governing the use of Title I funds and still qualify for special treatment?

The 1978 amendments to Title I expanded the number of exemptions to the basic criteria school districts must satisfy in order to qualify for Title I assistance. For example, a school enrolling 75 percent or more low-income children may now use Title I funds to upgrade generally the entire school program rather than develop a special program for specific children.[145] In addition, instructional personnel paid entirely from Title I funds may generally aid the entire school by performing duties, such as hall duty, so long as similarly situated personnel, paid from state and local funds, perform similar duties and the total amount of time spent on these general duties does not exceed 10 percent.[146]

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144. Supra., note 3 at page 26.

145. Supra., note 123.

146. Supra., note 122.

It is our opinion that state and local compensatory education programs may adopt exemptions governing the use of state and local special funds that are identical to the exemptions governing the use of Title I funds contained in the Title I statute. There is no indication that Congress intended to apply minimum standards to state and local programs that are more restrictive than it imposed on Title I programs.

It is also our opinion that where a state or local compensatory education program that includes exemptions from the five minimum criteria that are more expansive than those applicable to Title I programs, state or local funds distributed under the exemption will not qualify for special treatment under Title I. To illustrate, assume that a state substituted 45 percent educationally deprived for the 75 percent low-income concentration permitted by Title I to authorize a school to use state compensatory education funds to generally upgrade the school program rather than serve only educationally deprived children. Even though considered compensatory education funds under state law, these funds provided to schools with less than 75 percent low-income children would not qualify for special treatment.

The reason for the disqualification is that, while it is reasonable to assume that Congress, though silent about any exceptions to the five criteria, intended to permit the same exceptions applicable to Title I programs to apply to state and local compensatory education programs, no basis exists for permitting broader exemptions, i.e., exemptions that might effectively repeal the five minimum standards that Congress clearly set out in the Title I statute.

In sum, in order to be considered "similar to Title I" a state or local program (a) must be consistent with the five criteria contained in the Title I statute and (b) may adopt exemptions which are identical to those contained in the Title I statute. Funds provided under exemptions that are inconsistent with those adopted by Congress, are not entitled to special treatment, i.e., they are considered regular funds.

C. Satisfying Title I Criteria Rather Than Analyzing The Label A State or Local Educational Agency Gives Its Program Determines The Treatment State and Local Funds Receive Under Title I

1. Introduction

Frequently, states enact legislation which is designed to accomplish more than one purpose (multipurpose legislation). For example, California's new school finance legislation includes a subpart entitled "Economic Impact Aid" (EIA).

EIA provides assistance for three categories of programs:

- a state compensatory education program similar to Title I,
- a state bilingual program, and
- general aid programs such as a program to assist in paying for security costs at schools experiencing significant vandalism.

Two questions have been raised regarding multipurpose legislation. First, does the inclusion of a section in the legislation which does not qualify for special treatment, disqualify those funds which do qualify for special treatment? Second, what are the implications of enacting multipurpose legislation that includes several programs qualifying for special treatment, but not the same special treatment?

There is a central principle which provides the answers to these questions. The principle is that only programs that satisfy the criteria contained in the Title I statute qualify for special treatment. The label adopted by the state or local educational agency for describing its program is not determinative. For example, the fact that a state enacts legislation which it refers to as "compensatory education similar to Title I" does not automatically qualify it for special treatment under Title I. The program must meet the five criteria set out in the legislation.

In accordance with this principle, only those portions of the special state or local programs that meet the Title I criteria qualify for special treatment.

The inclusion of a section in the state or local legislation which does not qualify for special treatment does not disqualify funds that must be used for programs which do qualify for special treatment.[147]

2. Examples of State and Local Programs that Do Not Qualify for Special Treatment Under Title I and Their Effect on Other Portions of Multipurpose Legislation Which Do Qualify

Below are three examples of portions of multipurpose legislation that do not qualify for special treatment under Title I.

a. Funds Used For Security--The portion of California's EIA program for security do not satisfy the criteria for consideration as a special program and therefore must be treated as regular funds. The remaining funds under EIA are still considered special funds.

b. Supplementary State and Local Funds Used for Non-Educationally Deprived Children In Highly Concentrated Schools--Title I authorizes school-wide projects for schools with high concentrations of low-income children; but only on the condition that the school district provides children in the district who are not educationally deprived an amount of supplementary state or local funds per child equal to the amount of Title I funds provided per educationally deprived child attending such school.[148] These supplementary state or local funds neither qualify for treatment as compensatory education funds nor state phase-in program funds. Therefore, these supplementary state or local funds do not qualify for special treatment under Title I.

c. State and Local Funds Used to Support School-Wide Projects that Do Not Use the Title I School-Wide Project Criteria--As explained earlier, if a state provided additional assistance for use in schools with high concentrations of

147. Supra., note 20 at pages 254 and 261.
148. Supra., pages 62-63.

needy children, the additional assistance used in schools having less than 75 percent low-income children (i.e., schools that do not meet the identical criteria contained in the Title I school-wide project exemption) would not be considered special program funds; rather they would be considered regular funds. As regular funds, they would not be entitled to special treatment, e.g., they would not be counted for purposes of the match under the special incentive program.

3. Multipurpose Legislation Establishing More Than One Special Program

California's EIA legislation funds two special programs--a state compensatory education program and a bilingual program. Nothing in Title I prevents the coordination and comprehensive planning of these two programs. (See Chapter VI). However, since two programs have different purposes and are treated differently under Title I, [149] it is important that funds provided under each program be separately accounted for.

In brief, the difference between compensatory education and bilingual programs is that whereas bilingual funds are in effect base funds for purposes of Title I, state compensatory education funds are "excess costs" or supplementary funds. In accordance with Title VI of the Civil Rights Act of 1964, limited English proficient students are entitled to an educational opportunity that is equal to and as effective as that provided to English proficient students. This is an obligation which a school district must satisfy irrespective of the existence of or the amount of bilingual state funds made available. In other words, all children are entitled to receive an equally effective opportunity to benefit from instruction. Whatever it costs to provide an equally effective opportunity, the school district must meet this obligation. Bilingual programs assist school districts in meeting their civil

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149. For example, state compensatory education funds qualify states for additional funds under the special incentive grant provision and an exemption from the supplement, not supplant provision. Bilingual funds are not counted under the special incentive grant provision and do not qualify for the exemption from the supplement, not supplant provision. See infra Chapter IV.

rights obligations to ensure equal opportunity for limited English proficient students by providing additional base funds.

In contrast, under existing U.S. Office of Education regulations,[150] federal (and, by implications, state and local) compensatory education funds may not be used to meet a school district's civil rights obligations. Compensatory education funds must be used to supplement the level of state and local funds which, in the absence of such programs, would have been provided. In the "absence of compensatory education programs," school districts must still meet their civil rights obligations to limited English proficient students.

D. Local Compensatory Education Programs

Are non-categorical state funds used by a school district to fund a program "similar to Title I" entitled to special treatment under Title I? The answer to this question is "yes." The Title I statute expressly provides that local compensatory education programs are considered "special programs" for purposes of Title I. The term "local compensatory education program" includes locally designed programs funded entirely out of state or local general funds that have been certified by the state educational agency as being similar to Title I and which the state educational agency determines are being used in accordance with the criteria.[151]

School districts in Minnesota, for example, receive additional funds under their school finance formula based on the number of special needs students in their district. Districts are encouraged, but not required, to use these funds for compensatory education programs similar to Title I. Those districts which choose to use these funds to develop local programs similar to Title I may take advantage of several exemptions.[152]

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150. 45 C.F.R. § 116.40(b)(1977).

151. Section 131(b)(1)(C) of Title I (20 U.S.C. 2751(b)(1)(C).

152. For example, local compensatory education funds qualify for an exemption from the comparability provision and the supplanting provision. However, local compensatory education funds may not be counted toward the state's special incentive grant under Title I since only state compensatory education programs qualify. See infra., in Chapter IV.

CHAPTER IV

WHAT CRITERIA MUST A PROGRAM SATISFY TO QUALIFY FOR ADDITIONAL FUNDS UNDER THE SPECIAL INCENTIVE GRANT PROVISION?

I. Introduction

In 1978 Congress enacted a special incentive grant program designed to encourage states to enact and support state compensatory education programs. This provision replaced an incentive grant provision, which was designed to reward states whose total tax effort for elementary and secondary programs exceeded the national average. This chapter of the paper (1) describes the criteria that a compensatory education program must satisfy to be eligible for a special incentive grant, (2) explains which special programs do not qualify, and (3) describes acceptable and unacceptable uses of funds provided under the special incentive grant provision.

II. Key Points Made In This Chapter

The key points made in this chapter are set forth below.

First, a compensatory education program that is "similar to Title I" does not automatically trigger additional funding under the special incentive grant provision. A program must be similar to Title I and meet two additional criteria: (a) the program must be enacted by the state (local programs do not qualify) and (b) at least 50 percent of the funds must be distributed in areas eligible for assistance under Title I.

Second, funds provided under bilingual programs, special education programs, and state phase-in programs do not qualify a state for extra assistance. If a state enacts multipurpose legislation, only those funds used for state compensatory education programs may be counted.

Third, the additional Title I funds provided under the special incentive grant program must be used to pay for Title I program activities and can not be considered part of the state compensatory education program.

III. A Description Of The Special Incentive Grant Provision

A. An Overview of the Criteria

The new special incentive grant provides states an additional dollar

under Title I for every two dollars of their own funds spent on state compensatory education programs satisfying the criteria described below. No state can receive a supplemental grant which exceeds 10 percent of the amount it would receive if the basic Title I grant were fully funded.[153]

To qualify for a special incentive grant, a state (local programs do not qualify) must enact a state compensatory education program satisfying the following criteria:[154]

1. All children participating in the program are educationally deprived.
2. The program is based on performance objectives related to educational achievement and is evaluated in a manner consistent with those performance objectives.
3. The program provides supplementary services designed to meet the special educational needs of the children who are participating.
4. School districts receiving funds under the special incentive grant keep such records and afford access thereto as are necessary to assure the correctness and verification of criteria 1-3.
5. The State Department of Education monitors performance under the program to assure that the requirements of criteria 1-4 are met.
6. Not less than 50 percent of the funds expended under the state compensatory education program in the year preceding the year in which it receives a payment under the special incentive grant program must be expended in areas eligible for assistance under Title I. States must develop a system for demonstrating compliance with this criteria.

B. Analysis of the Criteria Selected By Congress

There are three things to note about the criteria selected by Congress. First, note that criteria 1-5 are the same as those required to qualify state compensatory education programs for other special treatment under Title I. Criterion 6 is the only additional requirement a state compensatory education program must meet to qualify for matching under the special incentive grant. Second, since only programs "similar to

153. Section 116 of Title I (20 U.S.C. 2721); See also supra., note 20 at page 254.
154. Section 116(a)(2) of Title I (20 U.S.C. 2721(a)(2)).

Title I" are eligible for matching funds,[155] this eliminates programs under which supplemental general aid funds are provided, for example, by way of a weighted formula. Third, only state programs qualify.[156] Congress rejected several attempts to include local compensatory education programs because of the administrative problems involved in determining whether local programs were designed in accordance with the criteria.[157]

IV. Multipurpose Legislation

Two issues arose during the debates concerning the application of the special incentive grant provision to multipurpose state legislation. The first issue was raised by states that have or might develop multiple purpose legislation, only one component of which provides educationally deprived children with supplementary services similar to Title I: will funds provided under the component that satisfies the six criteria be counted, when other components do not satisfy the criteria? The Conference Report explains:[158]

> If a state enacts such legislation, only the portion of state funds which are actually spent on educationally deprived children and which meet all of the other requirements of (the special incentive grant provision) ....will qualify for Title I matching funds under the new incentive grant provision.

The second issue considered in the debates was whether funds provided under a bilingual program could be counted as part of the match. Congressman Perkins, the Chairman of the House Committee on Education and Labor and floor manager of the Title I bill stated emphatically that bilingual funds (and by implication special education funds and state phase-in funds) are not to be included for purposes of the match.

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155. Section 116(a)(2)(A) of Title I (20 U.S.C. 2721 (a)(2)(A)).

156. Section 116(a)(1) of Title I (20 U.S.C. 2721(a)(1)).

157. See, for example, Cong. Rec. H6537 (daily ed. July 12, 1978).

158. Supra., note 20 at page 254.

> I do not believe....that state programs of bilingual education should...qualify as regular compensatory education programs. It would seem to me that those programs are somewhat differently oriented than regular compensatory programs and, therefore, must be treated differently. 159)

As explained previously, bilingual programs generally provide additional base-funds to assist school districts in meeting their obligation to provide equal opportunity to limited English proficient students; an obligation which exists irrespective of whether or not state compensatory education programs are provided. Compensatory education funds, on the other hand, are considered by Title I to be "excess costs" funds designed to expand and improve the education programs made available to program participants rather than to meet legal obligations to eliminate barriers to the full participation of limited English proficient or handicapped children.

V. Acceptable Uses of Title I Funds Provided Under The Special Incentive Grant Provision

The National Institute of Education recently completed a report entitled, State Compensatory Education Programs: A Supplemental Report.[160] Subsequent to the enactment of the Education Amendments of 1978, the National Institute of Education staff interviewed state administrators concerning, among other things, their understanding of the implications of the special incentive grant provision. The report found that many state personnel responsible for administering the state compensatory education program believed that the Title I matching funds could be used to pay for additional state compensatory education services.[161] This impression is inaccurate. The special incentive grant provision does not establish a new program; it simply provides additional Title I funds to school districts within qualifying states. These funds are subject to the same requirements as Title I basic grant funds.

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159. Cong. Rec. H6602 (daily ed. July 13, 1978).

160. Supra., note 5.

161. Id. at page 4.

CHAPTER V

DEVELOPING A STATE OR LOCAL SPECIAL PROGRAM THAT EXPANDS THE NUMBER OF CHILDREN RECEIVING COMPENSATORY EDUCATION SERVICES WITHOUT RUNNING AFOUL OF THE TITLE I RULES

I. Introduction

From the point of view of a state or local policy maker, the single most important issue in developing a state or local special program is how to expand the number of children receiving compensatory education services without running afoul of the Title I rules.

Six provisions of the Title I statute are relevant to this issue. These are: (a) the provision concerning the distribution of state aid, (b) the maintenance of effort provision, (c) the comparability provisions, (d) the provisions for designating Title I project areas, (e) the provisions for selecting Title I program participants, and (f) the supplement, not supplant provision.

Of the six, the most important is the supplement, not supplant provision pertaining to state and local special program funds. In general, this provision states that Title I funds must supplement, not supplant the level of state and local special program funds which, in the absence of Title I, would have been made available to educationally deprived children, in the aggregate, residing in Title I eligible areas. Although the most important, this provision is least understood by state policy makers! Because of this lack of understanding, some states have failed to enact state compensatory education legislation; others may be pursuing needlessly restrictive policies.

The National Institute of Education, in its study of state compensatory education programs, concluded that most of the problems identified by state administrators with Title I provisions resulted from the U.S. Office of Education's failure to explain adequately and then disseminate the precise nature of the Title I legal constraints, even though the U.S. Office of Education had developed reasonable and flexible interpretations.[162]

In recognition of these problems, the 1978 amendments to the Title I statute include provisions clarifying:

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162. Supra., note 7, Chapter V.

- the exemptions of state and local special programs from comparability;
- the exemptions of state and local special programs from requirements pertaining to the designation of Title I project areas and program participants; and
- the applicability to state and local special programs of the supplement, not supplant provision.

This chapter of the paper is organized into seven sections. The first section is the introduction. The second section contains the major points made in this chapter. The third section describes the state aid penalization and maintenance of effort provisions. The fourth section describes the key components of the comparability provision applicable to state and local special programs. The fifth section describes how the provisions for designating Title I project areas and selecting program participants relate to state and local special programs. The sixth section describes how the supplement, not supplant provision applies to state and local special programs. The final section gives examples of special state and local programs that expand the number of children participating in compensatory education programs without running afoul of the Title I requirements and examples of unacceptable practices.

II. An Overview of the Major Points in this Chapter

The existing Title I statute, as amended in 1978, contains three basic policies concerning the distribution of state and local special funds.

First, Title I neither requires nor encourages favoring educationally deprived children residing in low-income areas in the distribution of state and local special funds; the comparability provision, which did require such favoritism prior to 1974, is now neutral with regard to the distribution of special state and local funds. The supplement, not supplant provision simply requires that such children, in the aggregate, receive their fair share of special state and local funds. The terms underlined in the previous sentence are designed to encourage states to provide supplementary services to the large numbers of educationally deprived children residing in low-income

areas who are presently eligible for but unserved by Title I because Title I is substantially underfunded and who could benefit from participation in a state or local special program.

Second, once the low-income area's "fair share of special state and local funds" has been determined, the Title I legal framework does NOT require that children residing in low-income areas participating in state or local special programs also receive assistance under Title I--so long as children, participating in the state or local special programs who would have participated in the Title I program, receive services of the same nature and scope as they would have received under Title I. In other words, it is generally NOT necessary to double fund a particular child who qualifies for assistance under a special state or local program as well as Title I ("layering" of funds is not required). What Title I requires is that educationally deprived children in the aggregate, residing in Title I eligible areas receive their fair share of special state and local funds. The use of the phrase "educationally deprived children in the aggregate," and the existence of the provision enabling local educational agencies to use state or local funds in lieu of Title I, enables school districts to expand the number of children who will receive compensatory education through state and local compensatory programs to include children eligible for but unserved by Title I as well as educationally deprived children residing in areas ineligible for Title I.

Third, when the combination of Title I and state or local compensatory education funds available in Title I areas reaches a specified level Congress viewed as approximating the level that would enable a school district to provide a program of sufficient size, scope, and quality for all educationally deprived children in all Title I eligible areas (K-12) a school district may use additional state and local funds to provide in the more affluent areas the same level of services provided in low-income areas. This is a limited exemption from the supplanting provision.

III. Restrictions Concerning The Distribution of State Aid to Local Education Agencies and The Maintenance of Efforts Provisions

A. Introduction

The Title I statute provides that a State may not penalize local educational agencies receiving large sums of Title I funds in the distribution of state aid, including aid provided under a special program or state phase-in program. The Title I statute also provides that a local educational agency is eligible to apply for and receive a grant under Title I if the local educational agency has maintained its fiscal effort, i.e., state and local support for public education, including funds provided under a special program or State phase-in program. This section describes these two provisions.

B. Restrictions Concerning the Distribution of State Aid

The Title I statute [163] provides that a state may not take into consideration payments under Title I in determining (a) the eligibility of the local educational agency for state aid or (b) the amount of state aid for the present year or for the preceding fiscal year; for example, by reducing state aid by the amount of Title I funds received by an local educational agency. Since the statute does not distinguish between "regular" state aid and state aid provided under special programs or state phase-in programs, the aid provided under the latter two programs are covered by this prohibition.

The existing regulations clarify the statutory requirement by explaining that the state is only prohibited from taking into consideration the amount of state aid "in such a way as to penalize the applicant agency with respect to the availability of state funds." [164] The state may provide additional aid to school districts receiving large amounts of Title I funds without running afoul of this provision.

Conceivably, in some states the amount of funds that a particular local

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163. Section 174 of Title I (20 U.S.C. 2824).

164. 45 C.F.R. § 116.18 (1977)

educational agency is entitled to receive under Title I and state law is so great that if it were required or permitted to use all of its appropriations, it would be operating extravagant and imprudent programs. To require or permit a local educational agency to implement an extravagant program is counterproductive, especially in states where there are other local educational agencies that do not receive adequate funding to meet the needs of all educationally deprived children in their district.

Title I neither requires nor permits a local educational agency to use Title I funds in an extravagant and imprudent manner.[165] If a state educational agency were faced with the facts described above, it would be required, under Title I, to reallocate a portion of the local educational agency's Title I appropriation to other local educational agencies in the state in accordance with procedures set out in the Title I regulations.[166] The state educational agency could not, however, reallocate a portion of the state aid since such a redistribution would constitute a penalization of the local educational agency with respect to the distribution of the state aid.

C. Maintenance of Effort

The Title I statute currently requires that the combined fiscal effort "as measured by either the amount per student or the aggregate expenditures" of the local educational agency and the state for free public education for the preceding year must not be less than their combined fiscal effort for the second preceding year.[167] In calculating "combined fiscal effort," a local educational agency must include funds provided under a state or local special program and a state phase-in program.

The Commissioner is authorized to waive, for one year only, the maintenance of effort requirement if he/she determines that such a waiver would be equitable due to exceptional and unforeseen circumstances, such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the local educational agency.[168]

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165. 45 C.F.R. § 116a.22(b)(4)(ii)(1977).
166. See supra., page 23 of Chapter II of this paper.
167. Section 126(a)(1) of Title I (20 U.S.C. 2736(a)(1)).
168. Section 126(a)(2) of Title I (20 U.S.C. 2736(a)(2)).

Where a waiver is granted, the Commissioner must reduce the local educational agency's allocation in proportion to the amount expended by such agency which was less than the amount expended for the second preceding fiscal year.[169)]

The statute provides that no payment may be made to a local educational agency unless the state educational agency finds that the maintenance of effort requirement has been met.[170)]

IV. The Comparability Provision

A. Introduction

The comparability provision of the Title I statute ensures that state and local funds will be used to provide services in each Title I project area school which are comparable, i.e., approximately equal, to services provided to children attending non-project area schools.

The purpose of this section is to outline the Title I comparability provision and then explain the relationship between the comparability provision and special state and local programs and state phase-in programs, including an explanation of the rationale for the 1974 and 1978 amendments.

B. The Basic Comparability Provision[171)]

The Title I comparability provision generally provides that each Title I project area school (i.e., each school serving an area having a high concentration of children from low-income families that is receiving Title I funds) must receive, at a minimum, services which are comparable to services provided to the average of the non-Title I schools. The regulations [172)] include specific criteria for determining comparability. Under the existing regulations, both of the following conditions must be met:

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170. Supra., note 167.
171. Section 126(e) of Title I (20 U.S.C. 2736(e)).
172. 45 C.F.R. § 116a.26(e)(1977).

1. The number of children enrolled per instructional staff member (including both certified and non-certified personnel) for each Title I school must not be more than 105 percent of the average number of children per instructional staff member in non-Title I attendance areas. Instructional staff members include, among other persons, teachers, principals, librarians, guidance counselors, and aides.

2. The amount of state and local money spent on each child enrolled in a Title I school for instructional staff salaries must not be less than 95 percent of the money spent per child in all non-Title I schools in the district.

The regulations also provide that a local educational agency must file with the state educational agency a statement of specific policies and procedures adopted by the local educational agency to ensure that instructional materials and supplies are provided to project and non-project area schools on a comparable basis.[173]

C. The Relationship Between the Comparability Provision and Special State and Local Programs and State Phase-In Programs

Prior to 1974, school districts were required to include special program funds in their comparability calculations. This meant that states and local school districts which enacted compensatory education legislation were required to favor low-income areas in distributing their special program funds. This result occurred because comparability requires that each Title I school receive, at a minimum, services comparable to the non-Title I average. If substantial compensatory education services were provided in some non-Title I schools, this would raise the non-Title I average; if any Title I school did not also receive the non-Title I average level of services, the school district would be non-comparable even though the children in Title I areas, as a whole, may have been receiving their fair share of compensatory education services.

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173. 45 C.F.R. § 116a.26(h)(3)(1977).

In other words, this pre 1974 policy was needlessly restrictive in the sense that the purpose of the comparability provision is to ensure that Title I areas are not discriminated against or penalized in the provision of the services paid out of state and local funds. This comparability provision not only prohibited penalization; it also had the effect of requiring local educational agencies to favor low-income areas in the distribution of special program funds. In many cases, this requirement was inconsistent with state compensatory programs designed to meet the needs of all educationally deprived children - not simply those residing in poor areas.

Under the 1974 amendments,[174] school districts can exclude from their comparability computations expenditures for special programs, i.e., state and local compensatory education programs similar to Title I, bilingual programs, and special education programs. The 1974 amendments, however required that a school district that excluded expenditures under bilingual and special education programs prepare a mini-comparability report[175] demonstrating that the services provided to children in Title I areas under each of these programs were comparable to services provided to similarly situated children in non-Title I areas. The major effect of the 1974 amendments is that school districts no longer must favor low-income areas receiving assistance under Title I.

The 1978 Amendments made three changes to the comparability provision affecting state and local programs. First, they clarified the 1974 amendments by reorganizing the applicable provision in the statute.[176] Second, they repealed the mini-comparability reporting requirements. Several legislators explained that the supplement, not supplant provision in the Title I statute and the protections in PL 94-142 and Title VII of Elementary/Secondary Education Act are sufficient to prohibit discrimination against

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174. P.L. 93-380.

175. Section 403(17) of P.L. 81-874 (20 U.S.C. 244(17)).

176. Prior to 1978, the exemption from the comparability requirement was contained in the definition of the term "excess costs." Presently, the exemption appears in section 131, which is entitled, "Exclusions from Excess Costs and Comparability Provisions for Certain Special State and Local Programs."

handicapped students and limited English proficient students residing in Title I areas.[177]

Finally, the 1978 Amendments expanded the categories of programs qualifying for the comparability exemption to include state phase-in programs.[178]

In sum, prior to 1974, the comparability provision had the effect of requiring school districts to favor low-income areas with respect to the distribution of (a) state and local compensatory education funds similar to Title I, (b) state or local bilingual funds, (c) state or local special education funds and (d) state phase-in programs. Today, the comparability provision is inapplicable to these programs to the extent school districts choose to exclude funds under these programs from comparability reports. The only provisions ensuring that children residing in low-income areas are not discriminated against with respect to the intra-district distribution of funds under the above programs are the supplement, not supplant provisions.

V. Provisions Pertaining to the Designation of Title I Project Areas and the Selection of Program Participants that Affect State and Local Special Programs

A. Provisions Pertaining to the Designation of Title I Project Areas

In general, the Title I statute provides that school districts must determine which school attendance areas are eligible for assistance under Title I, i.e., areas having high concentrations of children from low-income families and then target, i.e., use Title I programs in school attendance areas having the highest concentrations of children from low-income families.[179] In other words, a school district generally may not operate a Title I program in a particular school attendance area unless all attendance areas with a higher incidence of children from low-income families are designated to operate Title I programs.

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177. Supra., note 3 at page 34.

178. Section 131(a) of Title I (20 U.S.C. 2751(a)).

179. Section 122(a)(1) of Title I (20 U.S.C. 2732(a). For a detailed discussion of the provisions pertaining to the designation of school attendance areas, see pages 26 - 33 of Chapter II of this paper.

There are several exceptions to the school attendance area eligibility and targeting provisions contained in the Title I statute and existing regulations. The exceptions were described in Chapter II of this paper.[180] The exception affecting state and local special programs is discussed below.

Recall that a school district may skip a higher ranked school attendance area if the educationally deprived children residing in that area receive, from non-federal sources, services of the same nature and scope as would otherwise have been provided under Title I.[181] This provision enables school districts to avoid the double funding of certain educationally deprived children at the expense of other educationally deprived children residing in low-income areas.

During the debates preceding the passage of the Education Amendments of 1978, two issues arose concerning the meaning of this exception. The first issue was whether a skipped school should be considered a Title I or a non-Title I school for purposes of demonstrating comparability. The legislative history accompanying the 1978 Amendments to Title I explains that the phrase "same nature and scope" means, among other things, that before a school district skips a highly ranked low-income school, it must demonstrate that the services provided to the skipped school are comparable to the services provided in non-Title I schools.[182]

The second issue is whether children attending private schools who reside in areas which have been skipped should also be skipped. The Title I statute provides that in cases in which educationally deprived children attending private schools are ineligible for state and local special programs, that such children must be selected for participation in Title I programs according to the general procedures for ranking school attendance areas without regard to the exemption to that procedure described above.[183]

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180. See pages 26 - 33.
181. Supra., note 70.
182. Supra., note 72.
183. Supra., note 71.

This provision is not to be construed to increase the number of children attending private schools who must receive assistance.[184] In sum, all determinations concerning the selection of children attending private schools must be made as if this exemption did not exist.

B. Provisions Pertaining to the Selection of Program Participants

In general, the Title I statute provides that school districts must determine which children are eligible for assistance under Title I, i.e., which children residing in project areas are educationally deprived and then target those children who are in greatest need of assistance.[185]

There are several exceptions to the general rules for eligibility and targeting of children. These exceptions were described previously in Chapter II of this paper.[186] The exemption affecting state and local special programs is briefly reviewed again below.

A child in greatest need of assistance residing in a Title I project area may be skipped if that child is receiving, from non-federal sources, services of the same nature and scope as would otherwise have been provided under Title I.[187] This amendment, like its counterpart under the provisions pertaining to the designation of project areas, enables school districts to expand the number of children receiving compensatory education by avoiding the double funding of certain children.

VI. A Description of the Supplement, Not Supplant Provision Pertaining to Special and Local Programs and the Exemption Thereto

A. Introduction

The Title I statute, as amended in 1978, contains two supplanting provisions;

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184. Supra., note 3 at page 22.

185. Section 123(a) of Title I (20 U.S.C. 2733(a)). For a detailed discussion of the provisions concerning the selection of a program participants, see pages 34 - 37 of Chapter II.

186. See Supra., pages 34 - 37.

187. Supra., note 86.

one provision pertains to distribution of regular state and local funds and state phase-in funds and the second provision pertains to the distribution of funds expended under special state and local programs.

The provision that school districts must supplement, not supplant regular state and local funds and state phase-in funds prohibits school districts from using the existence of Title I as a basis for discriminating against educationally deprived children participating in Title I programs in the provision of state and local regular or state phase-in funds.[188] In other words, Title I program participants must receive their fair share of state and local base funds and state phase-in funds, i.e., the same level provided to nonparticipants.

The distribution of funds provided under special state or local programs is designed to ensure that educationally deprived children, in the aggregate, residing in Title I eligible areas, receive their fair share of special state and local funds.[189]

Note the difference between the two provisions. Whereas the supplanting provision concerning regular state and local funds ensures that each program participant receives his/her fair share of regular funds, the supplanting provision pertaining to special state and local funds ensures that educationally deprived children, in the aggregate, i.e., the class of educationally deprived residing in low-income areas (as opposed to any particular child) receives its fair share of special state and local funds.

By focusing on the class of educationally deprived children residing in Title I eligible areas instead of on each "program participant," school districts need not double fund, i.e., provide state local compensatory education funds as well as Title I, to any particular child.[190] In other words, the supplement, not supplant provision pertaining to the distribution of state and local special funds permits

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188. Section 126(c) of Title I (20 U.S.C. 2736(c)). This provision is discussed, in detail, supra., at p. 45 , Chapter II.

189. Section 126(d) of Title I (20 U.S.C. 2736(d)). This provision is discussed, in detail, supra., at p. 45 , Chapter II.

190. Supra., note 3 at pages 29-31.

school districts to expand the number of children in the district receiving compensatory education, while, at the same time, ensuring that children eligible for, but unserved by Title I, who reside in low-income areas receive their fair share of the special funds.

B. The Operative Language of the Supplanting Provision And The Exception Thereto

This subsection of the paper describes the supplanting provision pertaining to state and local special funds and the exemption thereto contained in the statute, as clarified by the legislative history and then explains the policies imbedded in the provisions.

1. The Provision

Except as noted below, Title I funds must supplement the level of funds that would, in the absence of Title I, be made available from non-federal sources for state and local special programs, (i.e., compensatory education programs similar to Title I, bilingual programs, and special education programs) for the education of educationally deprived children, in the aggregate, residing in Title I eligible school attendance areas, and in no case to supplant such non-federal funds.[191]

Once a school has demonstrated that the educationally deprived children, in the aggregate, residing in Title I eligible areas receive at least the same level of special state and local funds that such children would have received in the absence of Title I, the school district may take Title I funds into consideration in deciding which children will receive Title I and which children will receive state or local special program funds. In making these decisions, the school district can coordinate the Title I and the state and local programs.[192]

The "level of special state or local funds that, in the absence of Title I, would have been made available" must be determined by reference to a plan for

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191. Section 126(d)(1) of Title I (20 U.S.C. 2736(d)(1)).

192. Section 126(d)(2) of Title I (20 U.S.C. 2736(d)(2)).

distributing such special funds which is based on objective criteria.[193]

To comply with the provisions of the 1978 amendment calling for the formulation of objective criteria, the school district must:[194]

> (1) formulate objective criteria for determining which children will receive assistance under the special state or local program;
> (2) identify the children satisfying the objective criteria and the schools or grade-spans in which such children are enrolled or school attendance areas in which such children reside;
> (3) determine what percentage of children of the total number of children in the district who satisfy the objective criteria reside in areas eligible for assistance under this title;
> (4) multiply the percentage of children residing in areas eligible for assistance under this title who satisfy the objective criteria by the total amount of state and local funds the local educational agency will provide for the special state or local program in all school attendance areas;
> (5) distribute to educationally deprived children, in the aggregate, residing in areas eligible for assistance under this title, an amount of such special state or local funds which is no less than the amount determined in step 4;
> (6) ensure that educationally deprived children residing in areas eligible for assistance under this title, satisfying such objective criteria, receive assistance under either this title or under such special state or local program before any child who does not satisfy such criteria receives such assistance;
> (7) ensure that all educationally deprived children in greatest need of assistance residing in Title I areas who receive assistance under a special state or local program in lieu of Title I, and who would have received assistance under Title I if such special program did not exist, receive services under such special program that are of the same nature and scope as would otherwise be provided under Title I; and
> (8) ensure that educationally deprived children attending private schools will be selected for participation in Title I programs according to general procedures for ranking school attendance areas without regard to exemptions to that procedure allowing children residing in certain areas to receive special state and local fund in lieu of Title I.

The application of these provisions is described in subsection B below.

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193. Section 126(d)(3) of Title I (20 U.S.C. 2736(d)(3)).

194. Supra., note 3 at pages 30 - 31.

2. The Exemption

Local educational agencies are exempted from the supplanting provision where the amount of state or local compensatory education funds (satisfying the conditions for an exemption from the excess costs and comparability provisions) used in areas eligible for assistance under Title I, when added to the amount of Title I funds provided to the local educational agency equals or is greater than the amount of Title I funds a local educational agency would have received that year had Title I been fully funded.[195] Under this limited circumstance, the local educational agency may use additional state compensatory education funds exclusively in non-Title I areas until those areas are brought up to the same level of total compensatory education funding (state and federal) provided per program participant in the Title I areas. After the non-Title I areas are brought up to this level, the "supplement, not supplant" requirement is fully applicable to the distribution of any additional state compensatory education funds.[196]

C. Policies Imbedded In The Supplanting Provision and Exemption Thereto

1. Introduction

The supplement, not supplant provision applicable to special state and local programs implements three important federal policies. First, educationally deprived children, in the aggregate, residing in Title I eligible areas are entitled to their fair share of special state and local funds. Second, once the amount of state and local special funds that must be provided to Title I eligible areas has been determined, school districts may use these funds to expand the total number of children receiving compensatory education assistance instead of double-funding children already receiving a compensatory program of sufficient size, scope, and quality from non-federal sources. Third, when the total amount of federal, state and local special funds reaches a sufficiently high level, Congress has determined that it is not necessary to ensure

195. Section 132 of Title I (20 U.S.C. 2752).

196. Id.

that children in Title I eligible areas receive their full fair share. These three policies are discussed in greater detail below.

2. The "Fair Share" Policy

When Congress originally passed Title I in 1965, it recognized that federal appropriations for Title I would not be sufficient to meet the needs of all educationally deprived children everywhere in a school district. To prevent dilution of funds, Congress decided to concentrate these limited resources on educationally deprived children residing in low-income areas (Title I eligible areas). In 1978, Congress recognized a second reality; namely that it was unlikely to appropriate sufficient funds for Title I to meet the needs of all educationally deprived children residing in Title I eligible areas. In order to prevent dilution of funds, Congress decided to further concentrate these limited resources on educationally deprived children in greatest need of assistance residing in the poorest areas within school districts.

At present, large numbers of educationally deprived children residing in attendance areas eligible for Title I programs are unserved by Title I; these children could benefit from participation in a state or local compensatory education program. The House Report notes that according to the National Institute of Education, "only two-thirds of students in need of services in Title I eligible elementary schools are being served. In addition, fewer than 1 percent of high school students receive Title I services...." [197]

The large number of children residing in Title I eligible areas who are presently unserved by Title I can be explained in part by the fact that Title I is substantially underfunded and in part by the large percentage of areas in a typical school district that are considered eligible for assistance under Title I. The National Institute of Education found that approximately 67 percent of the areas in a typical school district are eligible for Title I.[198] This percentage will probably increase

197. Supra., note 3 at page 7.

198. National Institute of Education, Title I Funds Allocation: The Current Formula at page 61 (DHEW/NIE 1977).

in the future because of the added flexibility permitted by the 1978 amendments.

The supplement, not supplant provision ensures that the educationally deprived children, in the aggregate, residing in Title I eligible areas receive their fair share of state and local special program funds- "fair share" meaning the level of special funds that, in the absence of Title I, would have been made available to them.

"Fair share" is determined in accordance with objective criteria contained in state or local law or policy that specify which educationally deprived children, attending which schools, are to receive what level of assistance under the special program. For example, assume that the objective criteria in a state compensatory education law specifies that compensatory education funds be used for children scoring below the 25 percentile on a standardized test regardless of their residency. If 60 percent of these low-scoring children reside in Title I eligible areas, then 60 percent of the state compensatory education funds must be distributed to meet the needs of educationally deprived children in low-income areas.

The criteria will not be considered "objective" if they disqualify children simply because they happen to reside in a low-income area. For example, it would be inappropriate to adopt a criterion which provided that "all children scoring below the 25th percentile on a standardized test who reside in affluent areas may participate in the state program." Such a policy has the effect of denying children residing in poor areas, who score below the 25 percentile, their fair share of state special funds.

In sum, the supplement, not supplant provision neither requires nor encourages the favoritism of educationally deprived children residing in Title I eligible areas in the distribution of state or local special funds. It simply provides that these children, in the aggregate, are entitled to their fair share of such funds. Of course nothing in the Title I legal framework prohibits a state or local school district from focusing all its compensatory funds in Title I eligible areas to meet

the need of children who are eligible for but unserved by Title I. This is because Title I only prevents favoritism of children not eligible for Title I services, i.e., children residing in the more affluent areas of a school district. It does not prohibit policies that favor children eligible for Title I.

3. Layering Is Generally Not Required

Once the total amount of special state or local special funds that must be provided to educationally deprived children, in the aggregate, residing in Title I eligible areas has been determined, school districts are free to decide which particular educationally deprived children within the poor areas actually will receive assistance from Title I and which children will receive assistance under the state or local special program, so long as the children normally served by Title I receive, from non-federal sources, services of the same nature and scope as they would have received under Title I.[199] In other words, school districts are not required to double fund some students at the expense of providing no service at all to other equally needy students. School districts need not provide Title I funds to children residing in poor areas who are already receiving assistance under a state or local compensatory education program providing services of the same nature and scope as would otherwise have been provided under Title I. This policy has the effect of freeing up Title I funds to meet the needs of additional educationally deprived children residing in low-income areas who do not participate in state or local compensatory education programs.

4. Limited Exemption From The Non-Discrimination Policy

In some school districts, the total amount of Title I and state or local compensatory education funds is so great that they are able to provide a program of sufficient size, scope, and quality for all educationally deprived children residing in all low-income areas (K-12). When this point is reached a policy requiring

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199. Supra., note 182.

additional state and local special funds above this level to be used in low-income areas, when some educationally disadvantaged children residing in more affluent areas are not receiving any assistance, is overly restrictive and counter-productive.

In recognition of the unintended effect of the supplanting provision when this level of supplementary services is reached in all low-income areas, the 1978 amendments to Title I include a limited exemption from the supplanting provision which is described on pages 86 - 87.

VII. Acceptable and Unacceptable Methods For Funding Compensatory Education Programs From Federal and State Programs

A. Introduction

As explained above, the primary purpose of the supplement, not supplant requirement in regard to state and local compensatory education programs (CE) is to ensure that the basic focus of Title I, i.e., meeting the special educational needs of educationally deprived children, in the aggregate, residing in low-income areas is not distorted by the local educational agency. A local educational agency cannot substitute its own policy for the Title I policy focusing on low-income areas.

The supplement, not supplant requirement prevents such a substitution from taking place. However, as the examples that follow illustrate, local educational agencies and states retain great flexibility to promote their own compensatory education policies with compensatory education program funds. Of course, these Title I requirements do, for example, preclude one possible state policy: use of compensatory education program funds to serve only educationally deprived children in its more affluent attendance areas - a policy which would arbitrarily discriminate against educationally deprived children residing in low-income areas eligible for, but unserved by Title I.

Several alternatives for satisfying the supplement, not supplant provision are analyzed in the following pages. Approaches which, in our opinion, would not

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200. This section of the paper is based on portions of a book prepared by Silverstein, Schember and Long entitled A Description and Analysis Of The Relationship Between Title I, ESEA and Selected State Compensatory Education Programs (September 1977). This book was prepared under contract with the National Institute of Education.

satisfy the requirement are also described.

B. A State Program Which Targets Schools According To The Degree of Educational Deprivation Rather Than Economic Criteria

1. Introduction and Basic Assumptions

Under Title I, local educational agencies are required to rank schools according to economic criteria. The schools having the highest incidence of poverty must generally receive Title I funds before schools with a lower incidence of poverty receive assistance.

In this example the state has chosen to target school attendance areas according to the objective criterion of educational rather than economic disadvantage for distribution of SCE funds. In other words, under state law or policy SCE funds must be used in schools having the highest incidence of educational deprivation before lower ranked schools receive assistance. We will see how the supplement, not supplant provision operates in this situation. In the examples below both local educational agencies No. 1 and No. 2 apply the same educational criterion for distribution of SCE funds. However, local educational agency No. 2, because it uses Title I funds to replace SCE funds that would have been available to Title I eligible children, has violated the supplement, not supplanting requirement. Local educational agency No. 1 has not.

For purposes of these two examples, make the following assumptions.

(1) The objective criterion governing the distribution of SCE funds provides that children in the first quartile (Q_1) in reading achievement in grades K-6 may participate. All other educationally deprived children are ineligible for assistance, i.e., second quartile (Q_2) children in K-6 and Q_1, and Q_2 children in grades 7-12.

(2) Elementary schools are ranked according to the number of children in the first quartile. SCE funds must be distributed to the highest ranked schools before funds may be used in lower ranked schools.

(3) The state legal framework requires local educational agencies expend a minimum of $300.00 in SCE or Title I on each child in a compensatory education program.

(4) There are 500 Q_1 students in grades K-6 eligible for assistance under the SCE program; in addition, there are 500 Q_2 children in K-6 and 1,000 Q_1 and Q_2 children in grades 7-12.

(5) SCE funds in the amount of $75,000 are available to the local educational agency. (It would take $150,000 to provide SCE services to all 500 Q_1 students in grades K-6 in each of the districts described below ($300 x 500 Q_1 students)).

(6) $150,000 are available from Title I (amount appropriated by Congress).

We will now consider the funds distribution plans of local educational agencies No. 1 and No. 2.

2. Acceptable Fund Distribution Scheme- local educational agency No. 1

Local educational agency No. 1 has enough money to serve 250 students with SCE funds (75,000 ÷ $300 = 250).

Local educational agency No. 1 has six elementary schools. The ranking of the schools according to the number of educationally deprived children scoring in the first quartile is set forth below. As indicated in parentheses, three of the schools are also eligible for assistance under Title I.

	Number of Q_1 Students
School A (Title I eligible)	130
School B (Title I eligible)	120
School C (Title I eligible)	80
School D (Ineligible)	75
School E (Ineligible)	50
School F (Ineligible)	45

In accordance with the school ranking used for distribution of SCE funds, these funds would "run-out" after serving school B. Thus, local educational agency No. 1 uses SCE funds for Q_1 children in schools A and B and Title I funds are then used to meet the needs of (a) Q_1 children in school C, Q_2 children in elementary

schools eligible under Title I for assistance (A, B, and C), or (c) Q_1 and Q_2 children in grades 7-12 residing in eligible areas.

Under the supplement, not supplant restriction, Title I funds may not be used to replace (supplant) the level of state and local funds that would have been provided but for the existence of Title I. The level of state and local funds that "would have been provided" in this example is determined by reference to the objective method of fund distribution selected, i.e., for the distribution of SCE funds, schools having the highest incidence of educational deprivation receive assistance before lower ranked schools. In other words, under the supplement, not supplant provision, SCE funds must be distributed in accordance with the objective criterion established by state law or policy as if Title I funds were not available; then, Title I funds are allocated in accordance with federal rules to meet the needs of educationally deprived children in low-income areas. In local educational agency No. 1, this means that 100 percent of the SCE funds are used to meet the needs of educationally deprived children in low-income areas (Title I areas) because the money runs out after schools A and B are served and both are Title I schools. If the two highest ranked schools were ineligible for assistance under Title I they would receive 100 percent of SCE funds pursuant to state law. Title I areas would have received no assistance. In both cases, the local educational agency would fully comply with Title I.

3. Unacceptable Fund Distribution Scheme-Local Educational Agency No. 2

Assume that local educational agency No. 2's ranking of schools by educational deprivation is identical to local educational agency No. 1's ranking. However, it is the policy of local educational agency No. 2 that any high ranked school (based on SCE criteria) which is also eligible for assistance under Title I receive funding under Title I instead of under the SCE program. In other words, schools which would otherwise have received assistance under the SCE program but for the

existence of Title I are skipped and, instead receive assistance under Title I. Local educational agency No. 2 prefers to use Title I instead of SCE funds in high ranked schools to further its objective of serving all children in the district eligible for the SCE program, i.e., Q_1 children in grades K-6, irrespective of their residency. The local educational agency's policy is contrary to the objective criterion established by the state for distribution of SCE funds.

Thus, based on the local educational agency's ranking, School A would have received $39,000 in SCE funds (130 x $300 = $39,000) but for the existence of Title I. However, because school A is eligible for Title I, local educational agency No. 2 does not distribute any SCE funds to it. Similarly, local educational agency No. 2 uses $36,000 (120 x $300.00 = $36,000) in Title I funds rather than SCE to meet the needs of Q_1 children in school B, which, but for the existence of Title I, would have received assistance under the SCE program.

Local educational agency No. 2 has supplanted SCE funds with Title I funds. Educationally deprived children in low-income areas have been discriminated against with respect to the distribution of $75,000.00 in SCE funds. But for the existence of Title I, Q_1 children in schools A and B would have received SCE funds under the objective criterion for their distribution, as in the case of local educational agency No. 1.

A recent decision by a United States District Court, faced with virtually identical facts described in the local educational agency No. 2 hypothetical, sustained this conclusion.[201]

4. Conclusions

In sum, where the SCE legal framework requires districts to serve schools in rank order, based on the incidence of educational deprivation (or other objective criterion), it is clear that a local educational agency may not skip a school eligible

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201. Alexander v. Califano, No. L-76-1982 CN.D.Cal. May 23, 1977.

for assistance under a SCE program simply because the school is also eligible for assistance under Title I. The effect of such a policy would be to defeat the objective of Title I, which is to meet the needs of educationally deprived children residing in low-income areas. The objective of Title I is defeated by the discrimination against low-income areas in the distribution of SCE funds. In local educational agency No. 2 the replacement of SCE funds with Title I funds results in both Title I and SCE funds being used to underwrite a state policy focusing compensatory education funds on educationally deprived children, irrespective of their residency.

It is important to point out that a state is not forbidden from using SCE funds for educationally deprived children residing in areas ineligible for Title I. Indeed, the present supplement, not supplant provision was added to the statute to encourage states to expand compensatory education opportunities for children residing in the more affluent areas of a district. All it requires is that educationally deprived children residing in low-income areas not be discriminated against in the distribution of SCE funds.

It is also important to understand that Title I does not require that local educational agencies rank schools according to their incidence of educational deprivation.[201] Title I simply requires that a local educational agency continue the same distribution of SCE funds which it would use if it had no Title I funds to allocate. If, in the absence of Title I funds, the SCE funds must be spent in schools in order of the educational need rank order, the SCE monies must continue to be expended in that same pattern even though some high-ranked schools may also be eligible to receive Title I funds.

Title I does not require that states adopt a ranking system. There are other funding methods which satisfy the supplement, not supplant and equitably provided regulations. For example, instead of requiring that local educational agencies

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201. See supra., pages 80 - 82.

rank schools according to the incidence of educational deprivation, an SCE program could adopt any of the policies described below. First, the local educational agency could set an objective cut-off point at, for example, Q_1 and Q_2 and, to the extent there are insufficient SCE funds to meet the needs of all eligible children, provide a proportional share at each school in the district, depending on the number of eligible children in attendance.[203] Second, Title I funds could be used to meet the needs of children in certain grades, e.g., 7-12, whereas the SCE funds could be used in other grades, e.g., K-6. Under both of these alternatives, the objective criterion must be applied in an identical fashion in Title I as well as non-Title I areas, e.g., SCE funds serve only K-6 children in both areas. Such SCE fund distribution schemes, which do not require the ranking of schools, are analyzed below.

C. An SCE Program Restructing The Total Number of Project Participants--Local Educational Agency No. 3

In contrast to the fund distribution scheme described in the previous example, the funding scheme in this hypothetical does not include a school attendance area ranking provision. Thus, assume in the hypothetical below that:

(1) There is no school attendance area ranking requirement.

(2) The objective criterion governing the distribution of SCE funds provides that children in the first quartile (Q_1) in reading achievement in grades K-6 may participate (a restriction on the number of project participants).

(3) The state legal framework requires that the total number of children participating in the SCE program not exceed the total allocation divided by $300 (another restriction on the number of project participants).

(4) SCE funds in the amount of $75,000 are available to the local educational agency. (It would take $150,000 to provide SCE services to all 500 Q_1 students in grades K-6).

(5) There are 200 eligible children in each of two Title I schools and 50 eligible students in each of two non-Title I schools (total 500)

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203. See infra., Chapter VI of this paper.

(6) $150,000 are available from Title I

Title I Schools		Non-Title I Schools	
200	200	50	50

The local educational agency, recognizing that it will not be able to fund services for all eligible students decides to distribute state funds in the following manner:

First, it determines the total number of eligible students who may participate, by dividing $75,000 (amount of SCE available) by $300.00 (see assumption 3 above) = 250 students.

Since only 50 percent of the eligible students may actually receive services under the SCE program, the local educational agency must decide which children to select. The local educational agency makes the following calculations:

Eighty percent of the eligible children (400 of the 500) reside in Title I attendance areas; therefore 80 percent of the SCE education funds, $60,000 must be used in these areas ($75,000 x 80 percent = $60,000). The remaining $15,000 may be spent in non-Title I areas.

By dividing the total number of funds available for Title I schools by $300, the local educational agency determines that it can provide services to 200 children in eligible areas ($60,000 ÷ $300 = 200) and 50 children in non-Title I areas ($15,000 ÷ $300 = 50).

Applying the above procedure, the local educational agency provides SCE funded services to half of the eligible children attending Title I schools and half of the eligible children attending non-Title I schools. Title I funds are then used to

provide services to three other groups of children -- the remaining 200 Q_1 children in Title I areas, Q_2 elementary school children in Title I areas, and Q_1 and Q_2 children in grades other than K-6.

The local educational agency's distribution of SCE funds fully complies with the present requirements. State funds are distributed equitably, without penalization of Title I areas or program participants.

D. An SCE Program Which Includes A Single Concentration Requirement Applicable to Title I As Well As The SCE Program-Local Educational Agencies No. 4, 5 and 6

1. Introduction and Basic Assumptions

The fund distribution scheme developed by the state in this hypothetical also does not include a school attendance area ranking requirement: In this regard it is similar to the previous example. In the previous example of local educational agency No. 3 we were not concerned with the concentration requirement applicable to Title I funds. In the example below, however, we assume that the same concentration requirement is applicable to both Title I and SCE program. Thus, in this example make the following assumptions:

(1) There is no school attendance area ranking requirement.

(2) The objective criterion governing the distribution of Title I and SCE funds provides that children in the first quartile (Q_1) in reading achievement in grades K-6 may participate. Educationally deprived children in grades K-6 in the second Quartile (Q_2) and Q_1 and Q_2 children in grades 7-12 are ineligible.

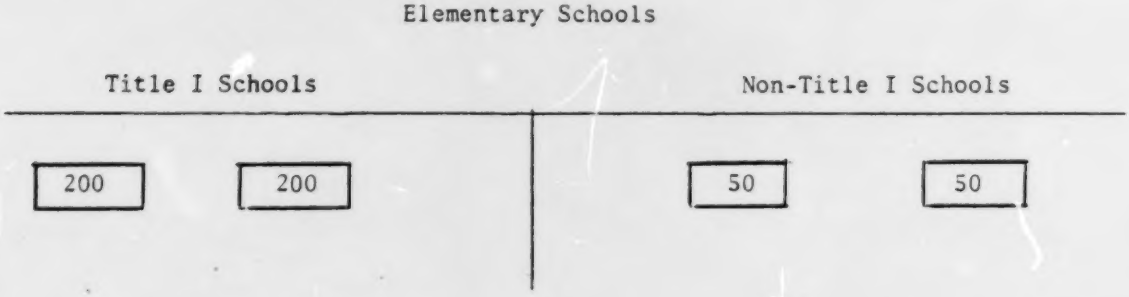
(3) There are 200 Q_1 children in each of two Title I elementary schools and 50 eligible students in each of two non-Title I elementary schools (total 500).

(4) There are 500 additional educationally deprived children in K-6 who are in the second quartile (Q_2) and 500 educationally deprived children in grades 7 - 12 who are not receiving any assistance under the Title I or SCE program.

(5) The state legal framework requires local educational agencies to expend a minimum of $300.00 in compensatory education funds on each child in a compensatory education program. Under the state guidelines, either SCE or Title I funds, or both, may be used to meet this $300.00 expenditure per pupil.

(6) SCE funds in the amount of $75,000 are available to the local educational agency. (It would take $150,000 to provide SCE services to all 500 Q_1 students in grades K-6).

(7) $150,000 are available from Title I (amount appropriated by Congress).



We will consider alternative fund distribution plans of three different local educational agencies.

2. Acceptable Fund Distribution Plans

a. Separate Funding in Title I Areas of Title I and SCE programs--Local Educational Agency No. 4--local educational agency No. 4 recognizes that $60,000 of the $75,000 allocation must be expended in Title I schools since 400 of the 500 or 80 percent of the eligible students reside in Title I areas. The local educational agency satisfies the $300.00 concentration requirement by providing only SCE funds to one Title I eligible school (200 children x $300 = $60,000) and uses only Title I funds in the other Title I school. The remaining $15,000 of SCE funds are used to provide services to the 50 Q_1 in one of the non-Title I schools ($15,000 ÷ $300 = 50). This local educational agency then uses the remainder of its Title I allocation to (a) provide additional services to the Q_1 children attending the elementary

schools, (b) serve Q_2 elementary school children or (c) eligible children attending high schools in Title I areas.

b. Joint Funding of a Compensatory Education Program in Title I Areas Using Title I and SCE Funds--Local Educational Agency No. 5-- local educational agency No. 5 decides to distribute SCE funds in the following manner. First, like local educational agency No. 4, it also determines that since 400 of the 500 eligible students reside in Title I areas, 80 percent of the funds ($60,000) will be provided to children in Title I areas. However, recognizing that there are 400 eligible children in the Title I areas, local educational agency No. 5 distributes $150 ($60,000 ÷ 400) per child from SCE and $150 per child for each child from Title I.[204] The total for each child is $300. Thus, the concentration requirement has been satisfied. In the non-Title I areas, the local educational agency satisfies the $300 concentration requirement by serving 50 of the 100 eligible students with the remaining SCE funds. The remainder of the Title I allocation is used in Title I attendance areas to provide additional services to Q_1 elementary school children or to fund services for Q_2 elementary school children and eligible children attending high schools.

c. Conclusions -- To what extent are the practices of these two local educational agencies consistent with the supplement, not supplant provision?

The practices pursued by local educational agency No. 4 and local educational agency No. 5 are both consistent with the supplement, not supplant provision set forth in the statute.

As explained supra., the supplement, not supplant provision set forth in the statute provides that local educational agencies must supplement, not supplant the level of funds that would, in the absence of Title I, be made available to

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204. Of course, since Title I funds are used for the program, all Title I requirements concerning program design, etc. would have to be met. See Chapter VI on the coordination of Title I and SCE programs.

educationally deprived children, in the aggregate, residing in Title I eligible areas. The procedure used by local educational agency No. 4 is clearly consistent with the Title I statute since educationally deprived children, in the aggregate, received their fair share of SCE funds. In local educational agency No. 4, children receive $300.00 in SCE funds regardless of whether they reside in a Title I eligible area or an area ineligible for Title I.

The procedure used by local educational agency No. 5 is also consistent with the statute, although the distribution scheme does take into consideration the existence of Title I. As compared to local educational agency No. 4, educationally deprived children in local educational agency No. 5 attending one Title I eligible school receive $150.00 more SCE funds than they would have received in the absence of Title I, and educationally deprived children attending the other Title I eligible school receive $150 less SCE funds. But this is counter-balanced by the first Title I eligible school receiving $150 less in Title I funds and the other Title I eligible school receiving $150 more Title I funds than they would have received if local educational agency No. 5 had not taken into consideration the existence of Title I funds. The net effect is the same as that in local educational agency No. 4: Title I eligible schools and children, in the aggregate, are not penalized, though some actual participants in Title I programs receive $150 less SCE funds.

Local educational agency No. 5's approach complies with the law because the purpose of the supplement, not supplant requirement, which is to prevent educationally deprived children, in the aggregate, residing in Title I eligible areas from being penalized in the distribution of SCE funds, does not require local educational agencies to completely ignore Title I funds when they distribute SCE funds so long as penalization does not result. Local education agency No. 5 has not penalized educationally deprived children residing in Title I areas since local educational agency No. 5 could have provided, without objection, the identical supplementary services to Title I children

with Title I and SCE funds simply by accounting for them as did local educational agency No. 4. Consequently, no discrimination against Title I eligible children resulted from the fact that local educational agency No. 5 took Title I funds into consideration in distributing SCE funds.

Graphically, the reasonableness of this policy is described below. Note that in both local educational agencies, each child receives $300.00 in compensatory education funds.

Title I Eligible Schools

Local Educational Agency No. 4		Local Educational Agency No. 5		
A		A		
Title I	$300	Title I	$150	= $300
SCE	0	SCE	$150	
B		B		
Title I	0	Title I	$150	= $300
SCE	$300	SCE	$150	

3. Unacceptable Fund Distribution Plans That Ignor The Fair Share Requirement--Local Educational Agency No. 6--

The same factual assumptions are made with respect to local educational agency No. 6 as were made about local educational agencies 4 and 5 (see supra., pp. 98 - 99). Local educational agency No. 6, desiring to serve all children in the district eligible for the SCE program, i.e., Q_1 children in grades K-6, irrespective of their residency, employs the following approach. Recognizing that $150,000 are required to provide services to its 500 eligible elementary children, the local educational agency combines

the $75,000 in the SCE funds with $75,000 of Title I funds to obtain the needed $150,000. The $150,000 are used to provide $300 in services to each child eligible to participate in the compensatory education program. $75,000 in Title I funds and $45,000 in SCE funds are used to serve the 400 children in Title I areas who are eligible for the program. The remaining $30,000 in SCE funds are used to serve the 100 eligible children in non-Title I areas.

Under this procedure, the educationally deprived children in Title I areas, taken as a whole, receive only 60 percent of the SCE funds rather than the 80 percent which the children residing in Title I attendance areas in local educational agencies No. 3 and No. 4 above received in accordance with the proportional distribution requirement. ($45,000 in local educational agency No. 6 versus $60,000 in both local educational agencies 4 and 5).

The policy of combining or pooling Title I and SCE funds by the fifth local educational agency in the example above is inconsistent with the statute. The local educational agency, in distributing SCE funds, has, in fact, penalized eligible children residing in Title I eligible areas. $15,000 in SCE funds which, but for the existence of Title I, would have been provided to the Title I eligible areas, have been allocated instead to ineligible areas.

The penalization of children residing in low-income areas resulting from pooling Title I and SCE funds in a manner that ignores the "fair share" requirement is similar to the penalization of such children by local educational agency No. 2, described in a previous example. The funding scheme used by local educational agency No. 2 (pg. 93) was deemed illegal because the local educational agency, which was required to distribute SCE funds to schools according to their incidence of educational deprivation skipped schools eligible for Title I, resulting in Title I paying for services which SCE would have paid for in those schools, but for the existence of Title I.

CHAPTER VI

HOW TO COORDINATE THE DESIGN AND IMPLEMENTATION OF TITLE I AND SPECIAL STATE AND LOCAL PROGRAMS WITHOUT RUNNING AFOUL OF THE TITLE I RECORDKEEPING REQUIREMENTS

I. Introduction

The previous chapters in this paper described the standards state and local programs must satisfy to qualify for special treatment under Title I and explained how the provisions offering special treatment, operate. This final chapter explains the effect the Title I recordkeeping requirements have on a school district's ability to coordinate Title I and state and local special programs.

Specifically, this part of the paper (a) describes the Title I recordkeeping requirement, (b) explains that school districts may coordinate Title I and state and local special programs, (c) describes several models developed by the U.S. Office of Education for coordinating federal and state programs, and (d) describes the exemption from the recordkeeping requirement for state and local programs that are identical to Title I.

II. The Major Points Made In This Chapter

The major points made in this section are as follows.

First, the purpose of the Title I recordkeeping requirement is to ensure that Title I funds are spent only for permissible purposes.

Second, the simultaneous use of funds under federal and state and local programs to finance identifiable portions of a single program are permitted.

Third, it is permissible under Title I to pursue a comprehensive planning approach and develop consolidated applications.

Fourth, where a state or local compensatory education program is identical to Title I, and the special state or local funds are excluded from comparability, the school district need not account for the Title I funds separately.

III. The Title I Recordkeeping Requirement

The purpose of the recordkeeping requirement is to ensure fiscal responsibility, i.e., to ensure that Title I funds are spent only for permissible purposes. Thus, the recordkeeping provisions do not create substantive requirements pertaining to

fund distribution or program design.

Specifically, the statute requires that each school district must keep such records and afford such access thereto as will facilitate an effective audit. This includes records which fully disclose the amount and disposition of Title I funds, the total cost of Title I programs, the amount of the portion of the cost of the program paid from other sources, and such other records as will facilitate an effective audit.[205]

IV. Coordinating Title I and State and Local Special Programs

The Title I statute expressly permits the coordination of Title I and state and local special programs.[206] This means that the simultaneous use of funds under federal and state programs to finance identifiable portions of a single program are permitted.[207] Furthermore, it is perfectly acceptable to pursue a comprehensive planning approach under which a plan is developed by a school district or a particular school within a district explaining how all resources, including federal and state regular and categorical funds are to be used.[208] It is also permissible for a state to develop a consolidated application, i.e., the design of a single application submitted by a school district to a state educational agency for approval for receipt of grants under Title I as well as special state sources.[209]

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205. Section 127(a) of Title I (20 U.S.C. 2737). For a detailed discussion of the Title I recordkeeping requirements, see page 51 of Chapter II of this paper.

206. Section 126(d)(2) of Title I (20 U.S.C. 2736(d)(2)).

207. See 45 C.F.R.§ 116a.41(b)(1977).

208. U.S. Office of Education correspondence from Robert Wheeler, Deputy Commissioner for School Systems to Wilson Riles, Superintendent of Public Instruction, State of California (July 15, 1976).

209. Id.

Although simultaneous use of federal and state funds, comprehensive planning, and consolidated applications are all acceptable under Title I, this does not mean that school districts are excused from complying with the recordkeeping requirements. The U.S. Office of Education has explained that the state educational agency must still be able to determine that Title I funds are "expended for and only for" purposes which satisfy each and every Title I requirement. The next section describes five models for coordinating Title I and state and local special programs.

V. The U.S. Office of Education Models for Coordinating Title I and Special State and Local Programs

A. Introduction

The U.S. Office of Education, in correspondence, has described five models for pursuing a comprehensive planning approach. The five models reflect different ways of varying two factors -- children served and services provided. Under models 1 and 3, Title I and SCE funds provide different services to the same children -- either different programs (model 1) or different components of the same program (model 3). Under the other three models, Title I and SCE funds serve different children -- either different grade levels (model 2), different groups pre-determined according to some factor other than grade level (model 4) or different schools (model 5).

In addition, hybrid models can be developed from two or more of the above five. Numerous combinations are possible. Thus the five models can be used as building blocks to construct a multi-faceted program.

Set forth below is a description of each model and an analysis of the circumstances under which a local educational agency may choose one model over another.[210]

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210. The reader should keep in mind that under each model described infra., Title I funds can only be used to meet the needs of educationally deprived children residing in low-income areas, i.e., Title I areas. Under no circumstances may Title I funds be used in areas ineligible for assistance under Title I. This section of the paper is based on portions of a book prepared by Silverstein, Schember, and Long entitled, A Description and Analysis of the Relationship Between Title I, ESEA and Selected State Compensatory Education Programs (Sept. '77). This book was prepared under contract with the NIE.

B. Each Source Funds Discrete Supplementary Programs for the Same Children (Model 1)

Under the first model the U.S. Office of Education explains that local educational agencies may fund discrete supplementary programs for children eligible to participate in a Title I program "in tandem."

"For example, remedial reading services could be funded with Title I funds while remedial math and auxiliary services would be funded with state and local compensatory education funds."

In implementing this model, the U.S. Office has indicated that the local educational agencies and the state educational agencies must still comply with the supplement, not supplant requirement analyzed supra.

In accordance with this provision, a local educational agency must distribute state and local compensatory education funds according to objective criteria without regard to the availability of Title I funds. A permissible objective criterion might be "the number of children scoring in the first quartile (Q_1) on a standardized test." The local educational agency must calculate the number of children qualifying for assistance under this criterion and then decide, given the level of funding by the state legislature, how many children may actually participate in a program. In distributing these funds, the local educational agency may not penalize children residing in areas eligible to receive assistance under Title I. Thus, under this model, if the state compensatory education funds, which are to be provided to Title I eligible areas in satisfaction of the supplement, not supplant requirement, exceed the amount needed to fund the math and auxiliary services component, the total level of state support due these areas eligible under Title I must still be provided; any amounts not needed to fund the math and auxiliary services must be used to support other compensatory education program components.

> If this process results in unused state compensatory funds in a local educational agency, those state funds would have to be used to replace Title I funds, in order to comply with the 'supplement, not supplant requirements'.

C. Each Source Funds Different Grade Levels (Model 2)

The second model suggested by the U.S. Office of Education is to use state and local funds for one grade level, e.g., K-6, and Title I funds for a different grade level, e.g., 7-12.

D. Each Source Funds Discrete Program Components for the Same Children (Model 3)[211]

Under the third model, the U.S. Office of Education explains that a local educational agency may fund particular program components with Title I funds and other components with state compensatory education funds.

> Particular parts of program components will be costed out in advance, item by item and the local educational agency will decide which funding source will pay for which item. For example, an identified reading teacher will be funded by Title I while the workbooks that he or she uses will be funded (under the state compensatory education program).

E. Each Source Funds A Discrete Program for Different Children (Model 4)[212]

The local educational agency may decide "to pay for a discrete program of supplementary services for a certain predetermined set of educationally deprived

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211. The U.S. Office of Education correspondence explains that where this method is is used, a cost allocation plan must be negotiated and approved by the state educational agency and the HEW Regional Office prior to implementation. See 45 C.F.R. § 100b.81(1975) and relevant section of Appendix B attached thereto.

212. Id.

children out of state or local compensatory funds." This model could operate within the same grade or school.

F. Each Source Funds Different Schools (Model 5)

This model provides a discrete program in some areas with Title I funds and uses SCE funds to provide a similar program in areas eligible for, but unserved by, Title I. This option is not expressly set forth in the U.S. Office of Education correspondence but it is expressly contemplated by the "no-skip exemption" contained in the statute. This exemption is discussed in Chapter V of this paper. For our purposes here it suffices to say that this exemption allows a local educational agency to not serve with Title I funds a Title I eligible school that has been designated to receive state or locally funded services "of the same nature and scope as those that would otherwise be provided under Title I." This, essentially, is a fifth coordination model. (Note -- there are other requirements that must be met in order to employ this model; the discussion here is not complete; a complete discussion is found in Chapter V.)

G. Summary

Certain general principles governing the models can be stated. First, as mentioned earlier, SCE funds must generally be distributed to attendance areas and children eligible to participate in Title I programs[213] in accordance with objective criteria.

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213. Title I elegible areas and children do not have to receive all the SCE funds, where the state distribution system provides for a proration or proportionate share to all areas in the district satisfying state criteria. Thus, SCE programs may extend into areas ineligible to receive Title I funds, but models 1 and 3 may not be employed in such areas. These models use Title I and SCE funds to serve the same children, i.e., these models can only be used in local educational agencies which use SCE funds for children who satisfy Title I eligibility and targeting requirements.

Second, under model 1 or 3, the children served must be the educationally deprived children having the "greatest need." This is simply because under these models Title I and SCE funds are provided to the same children; thus, the children served must meet all Title I requirements. This does not mean, however, that all SCE programs must meet Title I targeting requirements because Title I does not require local educational agencies to choose model 1 or 3. Other models may be used.

Third, particular characteristics of SCE programs may make one model more attractive to a local educational agency than another. For example, under the Michigan Chapter III program, local educational agencies are required to satisfy rigorous evaluation requirements with respect to each child included in the state program. If the local educational agency were to choose either model 1 or 3, it would be required to satisfy the state evaluation requirements for a substantially larger number of children than if it were to select one of the other models since, under models 1 and 3, children are considered as participating in both the Title I and state program, though specific components of the single program are accounted for separately. If models 2, 4 or 5 were used, the state evaluation requirements would only apply to the children receiving the state funds, a smaller number than under 1 or 3.

Under other circumstances, however, model 1 or 3 might be preferable to other models. For example, if an SCE program, as legislated, were not similar to Title I, its fund would not necessarily be excludable from comparability computations (see Chapter V, supra); however, a way to ensure that the SCE funds as actually used, could be excluded from comparability computations would be to properly coordinate them with Title I funds using either model 1 or 3.

VI. The Exemption From the Recordkeeping Requirement for State and Local Compensatory Education Programs Which Are Identical to Title I

The statute contains an exemption to the recordkeeping requirement where the school district operates a single compensatory education program funded from Title I and a state or local compensatory education program meeting all Title I requirements.[214] Where the state or local program is identical to Title I and such funds are excluded in determining comparability, the local educational agency need not account for the Title I funds separately.

To the extent a federal auditor finds that compensatory education funds have been misspent or misapplied, the federal government can seek repayment in proportion to its contribution.[215]

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214. Section 127(a) of Title I (20 U.S.C. 2737(a)).

215. Id.

The Education Commission of the States is a nonprofit organization formed by interstate compact in 1966. Forty-seven states, American Samoa, Puerto Rico and the Virgin Islands are now members. Its goal is to further a working relationship among governors, state legislators and educators for the improvement of education. The commission offices are located at Suite 300, 1860 Lincoln Street, Denver, Colorado 80295.

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